SUPREME COURT OF THE UNITED STATES.

No. 260.

DENNIS MULLIGAN, PLAINTIFF IN ERROR,

vs.

JOHN CORBIN, MARTH. A. CORBIN, AND MARTHA CORBIN, JR.

IN ERROR TO THE KENTUCKY COURT OF APPEALS.

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1 UNITED STATES OF AMERICA,
District of Kentucky, ss

The President of the United States of America to the judges of the court of appeals for the State of Kentucky, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you between John Corbin, Martha A. Corbin, and Martha Corbin, jr., plaintiffs, and Dennis Mulligan, a manifest error hath happened to the great damage of said Dennis Mulligan, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the part aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of our next December term, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, and the seal of said court at Louisville, in said district, this seventeenth day of March, A. D. 1867, and of the independence of the United States the 91st.

[SEAL.] A. J. BALLARD,
C. C. C. K. D.

2 UNITED STATES OF AMERICA,
District of Kentucky, ss:

To John Corbin, Martha A. Corbin, and Martha Corbin jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court of appeals for the state of Kentucky, wherein Dennis Mulligan is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment, in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable B. J. Peters, chief justice of court of appeals of Kentucky, this 18 day of March, in the year of our Lord 1867, and of our independence the ninety-first.

B. J. PETERS,
Chief Justice of Ky.

3 UNITED STATES OF AMERICA:

Supreme Court of the United States.

DENIS MULLIGAN, plaintiff in error,
vs.
JOHN CORBIN, MARTHA A. CORBIN, and Martha Corbin, jr., defendants in error.

I, Asa McConathy, D. S., of Fayette county, State of Kentucky, make oath and say, that I executed the citation hereunto annexed, bearing date the 18th day of March, 1867, and signed by Hon. B. J. Peters, chief justice of Kentucky, in a suit in the Supreme Court of the United States, wherein Denis Mulligan is plaintiff in error, and John Corbin, Martha A. Corbin, and Martha Corbin, jr., are defendants in error, by showing to the said John Corbin, Martha A. Corbin, and Martha Corbin, jr,, this original citation, and deliv-
4 ering to each of them a true copy thereof.

Witness my hand and seal, this 21st day of March, 1867.

[SEAL.] ASA McCONATHY, *D. S.*

Sworn to before me by Asa McConathy, March 21st, 1867.

Att.: CHA'S F. LOWRY,
D. C. of C C.

Subscribed and sworn to before me, a commissioner of the United States circuit court, this 13th day of July, 1867.

MORGAN VANCE,
Com'r U. S. C. C. K. D.

5 Circuit court of the United States, sixth circuit and district of Kentucky.

Know all men by these presents, that we, Dennis Mulligan, Thomas Quinn, and Hugh McDonald, are held and firmly bound unto the above-named John Corbin, Martha A. Corbin, and Martha Corbin, jr., in the sum of one thousand five hundred dollars, to be paid to the said John Corbin, Martha A. Corbin, and Martha Corbin, jr.; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 18th day of March, A. D. 1867.

Whereas, the above-named Dennis Mulligan hath prosecuted a writ of error to the Supreme Court of the United States at the city of Washington, to reverse the judgment rendered in the court of appeals of Kentucky, sitting at Frankfort, against the said Den-
6 nis Mulligan, in the case of the said John Corbin, Martha A. Corbin, and Martha Corbin, junior, against him, the said Dennis Mulligan:

Now, therefore, the condition of this obligation is such, that if the

above-named Dennis Mulligan shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] DENNIS MULLIGAN.
[L. S.] THOMAS QUINN.
[L. S.] HUGH McDONALD.
By JOHN McCOY,
Atto. in fact.

Taken and acknowledged before me, this 18th day of March, A. D. 1867.

B. J. PETERS,
Chief Justice of Ky.

A copy. Attest:

A DUVALL, *C. C. A.*

7 Know all men by these presents, that I, Dennis Mulligan of the city of Lexington, in the county of Fayette, and State of Kentucky, and I, Hugh McDonald, Thomas Quinn, of the same city, county, and State, have made, constituted, and appointed, and by these presents, do make, constitute and appoint John McCoy, of the same place, our true and lawful attorney in fact for us, and in our names, places, and stead to sign each of our names to a certain supersedeas bond in a suit in the Supreme Court of the United States, wherein Dennis Mulligan is plaintiff in error, and John Corbin, Martha A. Corbin, and Martha Corbin, jr., are defendants in error, and we hereby authorize our said attorney in fact, John McCoy, to acknowledge the said bond for us, and to do everything in relation thereto as fully and completely, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done
8 by virtue hereof.

In witness whereof, we hereunto set our hands and seals this 18th day of March, 1867.

DENNIS MULLIGAN. [SEAL.]
THOMAS QUINN. [SEAL.]
HUGH McDONAND. [SEAL.]

[Stamp, 50-cent.]

STATE OF KENTUCKY, *County of Fayette:*

Dennis Mulligan, Thomas Quinn, and Hugh McDonald, personally appeared before me and acknowledged the foregoing power of attorney as their joint and several act and deed. I certify the sureties in this bond each good for three thousand dollars and a much larger amount, both being men of wealth and respectability, and owners of real estate in this county.

Witness my hand this 18th Mar., 1867.

Z. GIBBONS, *J. P.*

A copy. Attest:

A. DUVALL, *C. A.*

[Stamp, 5-ct]

3 UNITED STATES OF AMERICA:

Supreme Court of the United States.

DENIS MULLIGAN, plaintiff in error,
vs.
JOHN CORBIN, MARTHA A. CORBIN, and Martha Corbin, jr., defendants in error.

I, Asa McConathy, D. S., of Fayette county, State of Kentucky, make oath and say, that I executed the citation hereunto annexed, bearing date the 18th day of March, 1867, and signed by Hon. B. J. Peters, chief justice of Kentucky, in a suit in the Supreme Court of the United States, wherein Denis Mulligan is plaintiff in error, and John Corbin, Martha A. Corbin, and Martha Corbin, jr., are defendants in error, by showing to the said John Corbin, Martha A. Corbin, and Martha Corbin, jr,, this original citation, and deliv-
4 ering to each of them a true copy thereof.

Witness my hand and seal, this 21st day of March, 1867.

[SEAL.] ASA McCONATHY, *D. S.*

Sworn to before me by Asa McConathy, March 21st, 1867.

Att.: CHA'S F. LOWRY,
D. C. of C C.

Subscribed and sworn to before me, a commissioner of the United States circuit court, this 13th day of July, 1867.

MORGAN VANCE,
Com'r U. S. C. C. K. D.

5 Circuit court of the United States, sixth circuit and district of Kentucky.

Know all men by these presents, that we, Dennis Mulligan, Thomas Quinn, and Hugh McDonald, are held and firmly bound unto the above-named John Corbin, Martha A. Corbin, and Martha Corbin, jr., in the sum of one thousand five hundred dollars, to be paid to the said John Corbin, Martha A. Corbin, and Martha Corbin, jr.; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 18th day of March, A. D. 1867.

Whereas, the above-named Dennis Mulligan hath prosecuted a writ of error to the Supreme Court of the United States at the city of Washington, to reverse the judgment rendered in the court of appeals of Kentucky, sitting at Frankfort, against the said Den-
6 nis Mulligan, in the case of the said John Corbin, Martha A. Corbin, and Martha Corbin, junior, against him, the said Dennis Mulligan:

Now, therefore, the condition of this obligation is such, that if the

above-named Dennis Mulligan shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] DENNIS MULLIGAN.
[L. S.] THOMAS QUINN.
[L. S.] HUGH McDONALD.
By JOHN McCOY,
Atto. in fact.

Taken and acknowledged before me, this 18th day of March, A. D. 1867.

B. J. PETERS,
Chief Justice of Ky.

A copy. Attest:

A DUVALL, *C. C. A.*

7 Know all men by these presents, that I, Dennis Mulligan of the city of Lexington, in the county of Fayette, and State of Kentucky, and I, Hugh McDonald, Thomas Quinn, of the same city, county, and State, have made, constituted, and appointed, and by these presents, do make, constitute and appoint John McCoy, of the same place, our true and lawful attorney in fact for us, and in our names, places, and stead to sign each of our names to a certain supersedeas bond in a suit in the Supreme Court of the United States, wherein Dennis Mulligan is plaintiff in error, and John Corbin, Martha A. Corbin, and Martha Corbin, jr., are defendants in error, and we hereby authorize our said attorney in fact, John McCoy, to acknowledge the said bond for us, and to do everything in relation thereto as fully and completely, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done
8 by virtue hereof.

In witness whereof, we hereunto set our hands and seals this 18th day of March, 1867.

DENNIS MULLIGAN. [SEAL.]
THOMAS QUINN. [SEAL.]
HUGH McDONAND. [SEAL.]

[Stamp, 50-cent.]

STATE OF KENTUCKY, *County of Fayette:*

Dennis Mulligan, Thomas Quinn, and Hugh McDonald, personally appeared before me and acknowledged the foregoing power of attorney as their joint and several act and deed. I certify the sureties in this bond each good for three thousand dollars and a much larger amount, both being men of wealth and respectability, and owners of real estate in this county.

Witness my hand this 18th Mar., 1867.

Z. GIBBONS, *J. P.*

A copy. Attest:

A. DUVALL, *C. A.*

[Stamp, 5-ct]

9 STATE OF KENTUCKY, *Court of Appeals:*

At a court of appeals of the State of Kentucky, held at Frankfort, Kentucky. Present Peters, chief justice, Williams & Hardin, judges, on the 18 day of February, 1867.

Appeal from the Fayette circuit court.

JOHN CORBIN & MARTHA A. CORBIN, his wife, and Martha A. Corbin, jr., appellants.
vs.
DENNIS MULLIGAN, appellee.

Be it remembered, that heretofore, to wit, on the 13 day of November, 1866, the appellants filed a copy of the record herein, which is in the words and figures following, to wit:

10 *Preamble.*

STATE OF KENTUCKY, *Fayette Circuit Court, sct.:*

Pleas held before the Honorable William C. Goodloe, judge of the court for the circuit aforesaid, at the court-house in the city of Lexington, Kentucky, on the 17th day of August, 1866.

Parties.

DENNIS MULLIGAN, plaintiff.
against
JOHN CORBIN & others, defendants.
} On petition.

Be it remembered, that heretofore, to wit, on the 15th day of July, 1861, the plaintiff filed his petition ordinary herein, and which original petition has been lost and cannot be found.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 14th day of February, 1862.

Order filing answer.

The defendants, John Corbin and wife, filed their answer herein, which is noted "lost and cannot be found."

Ord. appt'g guard ad litem.

Ordered that J. B. Beck, esq., be appointed guardian ad litem for the defendant, Martha Ann Corbin, jr., to defend for her in this case.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 21st day of February, 1865.)

Ord. filing subst'd and amended petition.

The plaintiff by leave filed a substituted and amended petition herein, which was sworn to be D. Mulligan, and three exhibits,
11 which are noted.

Ord. to retake Green's depo.

On motion of the plaintiff, leave is given him to retake the deposition of Grant Green, late auditor, subject to legal exceptions.

Said substituted and amended petition and exhibits, were subsequently withdrawn by plaintiffs by leave of the court.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 17th day of August, 1865.

Order dismissed.

Ordered that this case be dismissed in pursuance to election.

And be it remembered, that heretofore, to wit, at a court, continued and held in and for the circuit aforesaid, on the 23d day of February, 1865.

Ord. withdrawing subst'd and am'd peto. Ord. filing peto.

The substituted and amended petition filed herein by leave is withdrawn.

Equity.

The plaintiff filed, by leave, his petition in equity and three exhibits, which are noted.

Ord. filing am'd peto.

The plaintiff, by leave, filed his amended petition herein, which is noted.

Said petition in equity is in the following words and figures, to wit:

Petition in equity.

The plaintiff amends his petition, and for amendment, says that his suit against the defendants referred to in his original petition was brought July the 15th, 1861, and that all the papers filed by him, as testimony therein, together with the petition therein, were
12 lost as before stated in his petition, to which this is an amendment; plaintiff wishes, as far as he can, to supply the loss of said papers by setting them up anew and filing certified copies of said papers whenever it can be done, and by proving the contents of such ones as cannot be so supplied by introducing oral testimony of their contents orally, or by deposition, or some other way. Of those documents lost of which certified copies cannot be had, are first, the deposition of Thomas B. Monroe, jr., then secretary of state, which is lost; neither can it be retaken, because of the death of said Thomas B. Monroe; secondly, the lease by which said Corbin held the said house and lot in plaintiff's petition mentioned as lessee under plaintiff, Mulligan. Of those documents lost of which certified copies can be had either directly or by way of recital in the title deeds and the contract of Thomas B. Monroe, jr., as agent and attorney of the

commonwealth of Ky., with the said commonwealth of Ky., for the recovery of said house and lot as an escheat, which is signed as before stated in plaintiff's petition. Also, the contract of Thomas B. Monroe, jr., as agent and attorney of the commonwealth of Ky, for the sale of said house and lot to Dennis Mulligan, the plaintiff, by said commonwealth of Ky., and by said Thomas B. Monroe, jr. Also, the receipt of said Thomas B. Monroe, jr., as attorney and agent of the commonwealth of Kentucky for payments, amounting to three
13 hundred dollars made by plaintiff, Mulligan, on account of said house and lot. Also, the recital of a deposit of one hundred and thirty-four dollars in the agricultural deposit bank at Lexington to the credit of Grant Green, auditor at Frankfort, Ky. Also, the report by said Thomas B. Monroe, jr., as agent and attorney of the recovery of said house and lot as an escheat to the commonwealth of Ky., and of the sale thereof to said plaintiff by said Thomas B. Monroe, jr., as agent and attorney of the commonwealth of Ky. aforesaid, for the sum of $400 (four hundred dollars.) Also, the approval of said report of recovery and sale by Grant Green, auditor of public accounts. Also, the deed of the commonwealth of Ky., by Grant Green, auditor, acknowledging the payment of the commonwealth of Kentucky's portion of the price of said house and lot into the treasury of the State of Ky., by plaintiff, Mulligan, and conveying said house and lot to said Thomas B. Monroe, jr., and plaintiff, Dennis Mulligan. Also, the deed of said Thomas B. Monroe, jr., and wife conveying said Thomas B. Monroe, jr's. interest in said house and lot, to plaintiff, Dennis Mulligan. Also, the deposition of Grant Green, esq., late auditor of public accounts. Also, as before stated, the deposition of Thomas B. Monroe, jr. Also, an official copy of the act of the legislature attempting to convey the said house and lot to Martha
A. Corbin, jr. All which are more particularly described
14 in plaintiff's petition, and here refered to and made part hereof. Other papers may be lost and not now recollected. All the above-described deeds, certified copies of deeds, certified copies of contracts, and recitals of deeds, receipts, and contracts recital in said deeds, are here refered to and made parrt hereof. Plaintiff further states, that by the laws of Ky., the auditor of public account is authorized to contract in behalf of the Commonwealth of Ky., with attorneys and agents for the recovery of escheats to commonwealth of Ky.; provided the compensation of such attorneys or agents is to come out of the property so escheated, and provided such contracts are signed by the auditor of public accounts and the attorney general, and approved by the governor of the commonwealth of Ky. In pursuance of this law, Thomas S. Page, auditor of public accounts, contracted with Thomas B. Monroe, jr., for the recovery of a certain house and lot in the city of Lexington, which was escheated to the commonwealth of Ky.; said contract was signed by said Thomas S. Page, auditor, James Harlan, attorney general, and was approved by C. S. Morehead, governor of the commonwealth of Ky., and was also signed by said Thomas B. Monroe, jr. It was stipulated in said contract that said Thomas B. Monroe

should have one equal moity of said house and lot as compensation, if he succeeded in recovering said house and lot as an escheat.

Said contract bears date November the 1st, 1855, and is here
15 refered to and made part hereof. Said Thomas B. Monroe, jr., did prosecute a suit in the name of the commonwealth of Ky., and did recover the said house and lot as an escheat to the Commonwealth; said suit was decided in the Fayette circuit court, in the name and style of the commonwealth of Ky. against Corbin, and the said Thomas B. Monroe, jr., did thereby become entitled to one equal moity of said house and lot. The records and proceedings in said suit, now on record in the Fayette circuit court, clerk's office, together with the proceedings in the court of appeals of Ky., and mandate of said court of appeals, now in the Fayette circuit court, clerk's office, are here refered to and made part hereof. Certicate copies of all said records will be filed herewith. Thomas B. Monroe, jr., as agent and attorney of the commonwealth of Ky., contracted and sold said house and lot to plaintiff, both for himself or his own, and the States or commonwealth of Ky's part, as before described said sale was reported as before described, and said report of said sale was approved by Grant Green, auditor, as before described, and said house and lot was conveyed to said Thomas B. Monroe, jr., and plaintiff, Dennis Mulligan, as before described, and was conveyed by said Thomas B. Monroe, jr., and wife, to plaintiff,

Dennis Mulligan, which conveyances are more particularly
16 described in plaintiff's petition, to which this is an amendment. The legislature of Ky., notwithstanding, afterwards passed an act attempting to denote said house and lot to Martha A. Corbin, jr., which act can have no binding effect and can convey no title to said Corbin, because by an express provision of the constitution of Ky., no law can be passed impairing the obligation of a contract. See constitution of Ky., section 18 article 10, page . The act refered to disregards the contract of the commonwealth of Ky., with Thomas B. Monroe, jr., and would deprive him of his interest in said house and lot acquired under his said contract with the commonwealth of Ky., which right, under said contract, and in said house and lot, was fully acquired by his successful prosecution of said suit and recovery of said escheat; the interest of said Thomas B. Monroe, jr., in said house and lot was his own private property, and the same constitution, section 12, article 10, page , declares private property shall not be taken for public use without just compensation being first made; plaintiff therefore asks the court to set aside the said act as unconstitutional and void; plaintiff again refers to the facts that the report of the recovery of said house and lot as an escheat, and the sale thereof by Thomas B. Monroe, jr., as agent and attorney of the commonwealth of Ky., to Dennis Mulligan, the
17 plaintiff, was approved by Grant Green, auditor, before the act of the legislature refered to was approved by the governor of the commonwealth Ky., and that the deed of conveyance by Grant Green, auditor of public accounts, to Thomas B. Monroe and Dennis Mulligan, was made before said act of the legislature could go into

effect; and the deed of conveyance from Thomas B. Monroe, jr., and wife, to Dennis Mulligan, was also made and perfected before said act of the legislature could go into effect; said deed of conveyance bear date on the 17th day of April, 1861, and the 25th day of April, 1861, respectively, and the said act of the legislature was approved by the governor of the commonwealth of Ky. on the 4th day of April, 1861; no day was fixed by said act when it should go into effect, it therefore necessarially went into effect under the general law in relation to statutes as to when laws go into effect when no time is fixed, which is sixty days from the time of approval by the governor of the commonwealth of Ky., and the said act could not convey any interest in said house and lot to said Martha A. Corbin, jr., before it went into effect, and can have no binding force before it goes into effect; plaintiff therefore pray the court to grant him relief—to decree him possession of said house and lot, and to dispose
18 of the matters herein according to equitable principals, he prays as he before prayed.

JOHN McCOY, *P. Q.*

Affidavit.

Plaintiff, Dennis Mulligan, makes affidavit and says the facts stated in this amended petition, he believes to be true.

Plaintiff's exhibit.

Whereas, Thomas S. Page, auditor of the commonwealth of Kentucky, and Thomas B. Monroe, jr., att'y at law, did, on the first day of November, 1855, enter into the following contract, to wit:

An article of agreement this day made and entered into by and between Thomas S. Page, anditor of public accounts of the State of Kentucky, of the first part, and Thomas B. Monroe, jr., att'y at law, of the second part, witnesseth: Whereas, it is represented that a certain lot in the city of Lexington, which is said to be escheated to the Commonwealth: beginning on Upper street, at the corner of Michial Clark's lot; thence with said Upper street, N. E. 50 feet; thence S. E. 140 feet on to within two feet of Bodley & Co.'s factory; thence S. W. 50 feet to Michial Clark's lot, and with his line to the beginning, containing 50 feet front, and 140 back. Now, therefore, the party of the first part has this day employed the party of the second part to sue and recover the said lot, and all that may be recovered of said lot. The party of the second part shall be entitled to one equal moiety for his compensation for services rendered in the premesis; and it is understood that Mrs. Hickey, widow of Wm. T.
19 Barry, is to have dower, or the amount which would be due her in case the lot had belonged to said Barry.

Given under our hand this 1st day of November, 1855.

(Signed in duplicate.)

THOS. S. PAGE, *Aud. Pub. Ac'ts.*
THOS. B. MONROE, *Jr.*
J. HARLAN, *Atty General.*

Approved.

C. S. MOREHEAD.

And whereas the said Thomas B. Monroe, did, on the 4th day of April, 1861, report to the auditor of public accounts, as follows, to wit:

"GRANT GREEN, Esq., auditor:

DEAR SIR: As agent of the commonwealth of Kentucky, I have recovered possession of a certain house and lot in the city of Lexington, mentioned and described in the petition in the Fayette circuit court, of Canroth *vs.* Corbin, and have as agent aforesaid sold the same to Dennis Mulligan for the sum of $400, one half cash, balance payable on April 1, 1861, taking good security for the payment of money.

"April 4th, 1861.

"T. B. MONROE, JR."

And which contract, was on the 4th day of April, 1861, approved as follows, to wit:

"I approve the above contract.

"April 4th, 1861.

"GRANT GREEN, *Auditor.*"

Wherefore, witnesseth, that for and in consideration of the premises, and the sum of one hundred and thirty-five dollars, the State's portions of said sale money under said contract being paid into the treasury by the said Dennis Mulligan, and by virtue of the law in such cases made and provided, I, Grant Green, auditor of public accounts, have bargained, sold, and conveyed, and by these presents doth sell and convey unto Thomas B. Monroe, jr., one equal moity, and to Dennis Mulligan the other equal moity of said lot: To have and to hold unto them, the said Monroe and Muligan, and their heirs and assigns, all the right, title, and interest of said commonwealth in and to said lot, with all the appurtenances thereto belonging or in anywise appertaining, free from all the claim or claims of all persons claiming by, through, or under said commonwealth.

Given under my hand, as auditor of public accounts, this 17th day April, 1861.

GRANT GREEN, *Aud.*

Plaintiff's exhibit.

This memorandum witnesseth: That as attorney for the commonwealth of Kentucky, I have agreed to sell to Dennis Muligan a lot of ground adjoining his residence in the city of Lexington, being the same lot recently recovered of John Corbin by the commonwealth, for the sum of four hundred dollars—one-half payable on the execution of a title bond, balance in one year thereafter.

I agree, as attorney aforesaid, to deliver possession of said property to said Muligan, and execute, or have executed the aforesaid bond within a reasonable time from date hereafter.

Nov. 25th, 1858.

THOMAS B. MONROE, JR.,
Att'y for Cm'th of Ky.

Rec'd, Dec. 4th, 1860, of Dennis Muligan, one hundred dollars in part payment for a house and lot sold by me to said Mulligan, being the house and lot recovered by commonwealth of Kentucky from John Corbin. Two hundred dollars have been heretofore paid by Mulligan to me, leaving now due one hundred dollars to complete the whole purchase money of $400; on the payment of which balance on April 18th, 1861, or before I am to execute to Mulligan a deed to said house and lot.

THOMAS B. MONROE, JR.,
Ag't and Att'y for Com'th of Ky.

Thos. B. Monroe, jr., has this day, at my request, deposited one hundred dollars of the amount within receipted for in the Agricultural Deposit Bank at Lexington, to the credit of Grant Green, auditor.

Frankfort, April 17th, 1861.

D. MULLIGAN.

Plaintiff's exhibit.

This indenture, made this 25th day April, one thousand eight hundred and sixty-one, between Thos. B. Monroe, jr., and Elizabeth J., his wife, of the county of Fayette, and State of Kentucky, of the first part, and Dennis Mulligan, of the county of Fayette,
22 and State of Kentucky, of the second part, withesseth:

That for and in consideration of the sum of two hundred ——— to me heretofore in hand paid, I, Thomas B. Monroe, jr., the party of the first part, do bargain, sell, convey, release, and grant to the party of the second part, and to his heirs, all my right, title, and interest in and to one undivided half or equal moity of a house and lot of ground, lying and being in the city of Lexington, county and State before mentioned, and bounded as follows: Beginning on Upper street, at the corner of Michial Clark's lot; thence, with said Upper street, N.E. 50 feet; thence S.E. 140 feet, or to within 6 feet of Bodley & Co.'s factory; thence S.W. 50 feet to Michial Clark's lot, and within his line N.W., to the beginning, containing fifty feet front and 140 feet back, and adjoining the present residence of said Dennis Mulligan; it being the same house and lot recovered by the the State of Kentucky as an escheat in the suit of the said commonwealth of Kentucky against Corbin, and conveyed by Grant Green, auditor, to Thomas B. Monroe, jr., and Dennis Mulligan, by deed duly recorded in the office of the Fayette county clerk, together with the rights, privilidges, and appurtenances hereunto belonging: To have and to hold the property hereby conveyed to the party of the second part, and to his heirs and assigns forever.

And the said Thomas B. Monroe, jr., covenants that he will
22½ warrant by general warranty the property hereby conveyed.

In testimony whereof, the party of the first part hereto set hands and seals the the day and year first above written.

THOMAS B. MONROE, JR. [SEAL.]
ELIZABETH G. MONROE. [SEAL.]

And afterwards, to wit, on the 4th day of April, 1865, summons issued upon the foregoing petition in equity against John Corbin, Martha Ann Corbin, and Martha A. Corbin, jr., which was returned duly executed by the sheriff of Fayette county.

Synopsis.—Sum's and return.

Summons in equity, returned by the sheriff of Fayette county, executed April 6th, 1865, on John Corbin, Martha Ann Corbin, and Martha Ann Corbin, jr.

And afterwards, to wit, at a special chancery and criminal term continued and held in and for the circuit aforesaid, on the 5th day of July, 1865:

Ord. app'ting guardian ad litem.

Ordered John B. Norton to be appointed guardian ad litem for Martha A. Corbin, jr., to defend for her in this cause.

Order.

The defendants moved the court to require the plaintiff to elect whether he will proceed under his ordinary and equitable ac-
23 tion against the defendants, Corbins.

And afterwards, to wit, at a court continued and held in and for the circuit aforesaid, on the 6th day of July, 1865.

Order pl'ff elects to proceed by equity.

On motion of the defendant, the plaintiff being required by the court to elect whether he would proceed under his ordinary or equitable action against the Corbins, (there being two suits pending in favor of the plaintiff *vs*, said John Corbin, jr., one at common law, and the other by equitable action,) elected to proceed upon his equitable action, and discontinue his ordinary suit.

Order excepting.

To which ruling by the court, however, requiring him to make said election, the plaintiff excepts.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 16th day of July, 1865.

Order filing answer.

The defendants, John Corbin, and Martha A. Corbin, his wife, this day filed their answer herein, to which they made oath, which is noted.

Said answer is in the following words and figures, to wit:

Answer of Corbin & wife.

The defendants, John Corbin, & Martha A. Corbin, his wife, for answer to the original and amended petitions of the plaintiff, state that it is not true, that the plaintiff is either the owner, or
24 entitled to the possessions of the house and lot described in the petition; said property belongs to the defendants, Martha A. Corbin, during her life, and the remainder in fee, belongs to their daughter, Martha Ann Corbin, who is an infant. They admit that they are in possession of the property, they have held it in actual possession, uninterruptedly, claiming it as the property of Martha A. Corbin for life; remainder in Martha Ann, against all the world for 20 years, last past; and they deny that they now, or at any time have wrongfully kept plaintiff out of the possession of it.

It is true, plaintiff instituted a suit, previous to the institution of of the suit now pending; and it is also true, that certain papers, evidencing his claim to the property, now sued for by him, were filed therewith, at least, they are so advised by their counsel; but they have no knowledge, nor have they any information upon which to form a belief, that the description and dates of said papers correspond with those given in plaintiff's petition, or that the papers set forth therein, as having been filed, were in fact filed; they, therefore, deny each of plaintiffs allegations, as to said exhibits, and they require the plaintiff to file official copies of all such as are recorded anywhere, and proof as to all those as are not recorded.

They admit that a suit was brought some years ago by Thomas B. Monroe, in the name of the commonwealth of Ky., against these defendants for the property now in controversy, claiming it as
25 having escheated to the commonwealth, by reason of the want of heirs of one Solomon Bundy, a free man of color, who died about the year 1833; but they charge that the proper parties were never brought before the court in said suit; their daughter, Martha Ann Corbin, who was and is the owner of the fee therein, never having been made a party thereto. They deny that any valid escheat of said property could be declared in any proceeding to which said Martha Ann Corbin was not a party. They deny that any valid agreement was ever made between the commonwealth of Kentucky, and Thomas B. Monroe, for the recovery of said property, or that any officers of the commonwealth of Ky. had power to make an agreement with him, such as plaintiff claims was made, or that he was ever authorized to sell said property, or to pay Mrs. Hickey any supposed dower interest out of the proceeds of sale thereof.

They charge, that all said arrangements, if any such were made, were champertens, illegal and void; and they further charge, that if such agreement between the officers of the commonwealth, and said Thomas B. Monroe were made and were legal, that said Monroe failed to comply with said agreement, and failed to make the owner in fee of the property a party to the proceedings, and failed to divest her of title thereto, so that his agreement and all subsequent proceedings thereunder, became, and were null and void, and his at-

26 tempted sales and transfers to the plaintiff afterwards passed no right or title to said property. They aver that the agreement between Thos. S. Page, auditor, and said Thomas B. Monroe, dated Nov. 1st, '55, and a copy of which is filed by plaintiff, under and by virtue of which plaintiff claims, is void: 1st, for want of power to make such a contract; 2nd, because it is on its face a champerons agreement, and 3rd, because it gives to Mr. Hickey a portion of the property or its proceeds, in violation of the rights and interest of the State, if it had any.

They further aver, that the conveyance of April 17th, '61, from Grant Green, auditor, to Monroe and the plaintiff, a copy of which is also filed with the petition, is null and void, because it is based solely upon the agreement above referred to, and upon the report of Thos. B. Monroe, made April 4th, '61, to the auditor, which report they aver is untrue, in asserting that said Monroe, as agent of the com'th, had recovered possession of the house and lot in controversy, when in fact said Monroe never had possession of it, but it was held by these defendants and their daughter, adversely to the commonwealth, said Monroe, and all other persons at the time said report was made.

The alleged agreement between Monroe and plaintiff was never approved by the auditor till after said report was made. They further aver that even if said agreement between the auditor and Monroe be valid, and if said report of Monroe be true, said
27 conveyance by Grant Green, auditor, to Monroe and plaintiff, is invalid, because it is not true that at the date of said conveyance, either one-half the purchase money plaintiff had agreed to pay Monroe for said property, or the $135 stated in said conveyance as paid, had in fact been paid into the treasury of the State of Ky., by the plaintiff.

They deny all the allegations of the plaintiff as to the alleged payments of purchase money into the treasury of Ky. for said property, and require proof.

They state that said property was, as early as 1838, taken possession of by Wm. T. Barry, under a contract or conveyance therefor from Solomon Brindley, the former owner, said Barry having then paid therefor; and it was held, used, and rented out by said Barry and his agents up to and long after the death of Brindley, who recognized and acknowledged the title of Barry as long as he lived. After the death of Wm. T. Barry it was levied on by execution in favor of the Bank of Ky. against Barry's ex'ors, and sold to one James March, who, with one Mary Shwaits, and Jane Mitchell, the mother of defendant, Martha A. Corbin, (purchase money having been paid by said Jane Mitchell,) directed the conveyance to be made to Martha A. Corbin for life; remainder to Martha Ann Corbin for life, with power of disposition, by will, of it in fee; and, in the event of her dying without children, then the remainder in fee to Hartwell Etherington. Said deed is duly recorded in the Fayette county clerk's office, and a copy therefor is filed herewith,
28 marked "A." They charge that the debt for which the

property was sold, as aforesaid, was in whole or in part for the benefit of the com'th of Ky., and that the commonwealth, and all claiming by, through, or under her, are estopped from disputing the right and title of Barry, and the purchasers of his title under such sale in and to said property. They aver that, after the attempted escheat of the interest of these defendants in said property, the commonwealth of Ky., by an act of the legislature thereof, divested the com'th, and all claiming by, through, or under her, of all right, title, or claim in and to said property, and vested the same in the defendant, Martha A. Corbin, for life; the remainder in fee to her daughter, Martha Ann Corbin. A copy of said act is made part thereof.

They deny that the approval of the auditor, Grant Green, to the contract made between Monroe and the plaintiff, relative to said property, was before said act signed and approved by the governor. Both bear date the same day; and they insist and charge that the approval of the governor to the act aforesaid has, and is, rightfully entitled to precedence in point of time over the other.

They charge, however, that if it should be made to appear that Monroe obtained the approval of the auditor before the signature of the governor to the bill aforesaid was affixed thereto, it was done and procured by said Monroe for the wrongful purpose of defeating the act and intent of the legislature; and the bill was wrongfully withheld by him from the governor, for the purpose of
29 enabling him to carry out his on private purpose. Said Monroe was acting secretary of state at the time, and his conduct in so withholding said bill was wrong, and he and his vendee cannot take advantage of it.

They aver that said Monroe, without the knowledge of the legislature of Ky., and with full knowledge of the act aforesaid, attempted, by virtue of his official position, to render it of no effect, all of which they aver is void, and no title passed to or from him to plaintiff by any such acts.

These defendants deny the allegations of the amended petition, which assert that Thos. B. Monroe's contract with the auditor was valid, and that he complied with the terms thereof. On the contrary, they again assert that it was invalid, champpertons, and was not complied with. No attemp was made to divest Martha Ann Corbin, jr., of her title; and they aver that both said Monroe and the auditor, and other officers of the commonwealth knew of, recognized the title of Wm. T. Barry; and in the contract with Monroe covenanted and agreed to give to Mrs. Hickey, the widow of said Barry, the value of her dower, interest therein, which these defendants aver neither said Monroe nor any officer of the commonwealth had a right to, if the property belonged to the com'th by escheat.

They charge that Thomas B. Monroe was, as attorney of Mrs. Hickey, prosecuting a suit for her dower in said property, as
30 widow of William T. Barry, at the time he made said contract with the auditor, and all the facts were known to both, or could have been by reasonable diligence.

They deny that the act of the legislature, passed for the benefit of Martha A. Corbin, and her daughter, was either illegal or unconstitutional, and deny each and all of the allegations of the petition and amended petition which, in any way, seek to assert right or title to said property in the plaintiff, or which contradicts the right of Martha A. Corbin and her daughter, Martha Ann, therein.

Defendant, John Corbin, admits that he signed some papers recognizing the right of the plaintiff to some portion of said property, but he neither recollects the purport of it, nor its date. It was never signed by defendant, Martha A. Corbin, nor recognized by her in any way.

The right of Martha A., she avers, could not be divested, nor in any way interfered with by said John, without her consent; nor could he either impair or divest her of title and possession without her consent. The property was hers for life. Her husband was a cripple, and unable to support his family; he had no property, and she asserts and charges that she could not be turned out of her home, nor divested of title thereto by any act of his; that her equity was, and is, superior to that of any person claiming rights under any agreement with the defendant, John. If, as plaintiff asserts,
31 the agreement between John Corbin and plaintiff was made before the report of sale by Monroe to the auditor, they charge that it was, and is, a void agreement. Said Mulligan had then no right or interest in said property to authorize him to make a lease or any other agreement about it.

They pray that the petition be dismissed, and judgment for costs and for other proper relief.

HUNT, BECK & CLARK, *P. D.*

John Corbin and Martha A. Corbin say that they believe the statements of the foregoing answer are true.

JOHN CORBIN.

her
MARTHA + A. CORBIN.
mark.

(Exhibit "A," referred to in the foregoing answer, is not on file in the papers.)

Exhibit in answer of Corbin and wife.

Chapter 402.

An act for the benefit of Martha A. Corbin.

Be it enacted by the general assembly of the commonwealth of Kentucky: That whatever interest in a small house and lot on Upper street, in the city of Lexington, which was conveyed, in the year 1808, by Thomas Bodly to Solomon Brindly, may rightfully belong to the State by escheat or otherwise since the death of said Brindly, without any known legal heir, be, and the same is, hereby released

to, and vested in, Martha Ann Corbin for her life, and her
32 daughter, Martha Ann, absolutely, after her said mother's death.

The said property having been bought in the year 1843, as the property of Wm. T. Barry, claiming and possessed of it after said Brindley's death, and conveyed in 1846 to the said mother and daughter as aforesaid, and who have occupied as theirs ever since said sale and conveyance.

Approved April 4th, 1861.

COMMONWEALTH OF KENTUCKY,
Office of Secretary of State.

The foregoing is a true copy from the original enrolled bill now on file in this office.

Given under my hand & official seal at Frankfort, this 9th day of May, 1861.

[SEAL.] THOMAS B. MONROE, JR.,
Sec'y of State.
By JAS. W. TATE, *Asst. Secy.*

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 18th day of August, 1865.

Order.

The plaintiff, by leave, this day filed six exhibits herein, which are noted.

Which are in the following words and figures, to wit:

33 *Plaintiff's exhibit.*

Escheats.

STATE OF KENTUCKY, TREASURER'S OFFICE,
FRANKFORT, *April 17th*, 1861.

Received of Thomas B. Monroe, jr., & Dennis Mulligan, by Grant Green, auditor, one hundred and thirty-four dollars, ($134 00,) for the States interest in a lot in the city of Lexington, the same having been escheated to the State and sold under a contract with Thomas B. Monroe, jr.

$134. J. H. GARRARD, *Treasurer.*
By D. GARRARD.

A copy. Test: W. S. SAMUELS, *Auditor.*

Plaintiff's exhibit.

GRANT GREEN, Esq., Auditor.

DEAR SIR: As agent of the commonwealth of Kentucky, I have received possession of a certain house and lot in the city of Lexing-

ton, mentioned and described in the petition, in the Fayette circuit court, of Coirwath *vs.* Corbin, and have, as agent aforesaid, sold the same to Dennis Mulligan, for the sum of $400, one-half cash, and the balance payable in April, 1861, taking good security for the payment of the money.

April 4, 1861.

T. B. MONROE, JR.

I approve of the above contract.
April 4th, 1861.

GRANT GREEN, *Auditor.*

A copy. Test: W. T. SAMUELS, *Auditor.*

34 *Plaintiff's exhibit.*

An article of agreement, this day made and entered into by and between Thos. S. Page, auditor of public accounts of the State of Kentucky, of the first part, and Thomas B. Monroe, jr., att. at law, of the second part, witnesseth: Whereas, it is represented that a certain lot in the city of Lexington, which is said to be esheated to the commonwealth,

Beginning on Upper street, at the corner of Michial Clark's lot; thence with said Upper street N. E. 50 feet; thence S. E. 40 feet, or to within two feet of Bodley & Co's. factory; thence S. W. 50 feet to Michial Clark's lot, and with his line N. W. to the beginning, containing 50 feet front and 140 feet back.

Now, therefore, the party of the first part has this day employed the party of the second part to sue and recover the said lot, and all that may be recovered of said lot the party of the second part shall be entitled to one equal moity for his compensation for services rendered in the premises; and it is understood that Mrs. Hickey, widow of Wm. T. Barry, is to have dower, or the amount which would be due her in case the lot had belonged to said Barry.

Given under our hands this 1st day of November, 1855.

(Signed in duplicate)

THOS. S. PAGE, *Aud. Pub. Acts.*
J. HARLAN, *Att. Gen.*
THOS. B. MONROE, JR.

A copy. Test: W. T. SAMUELS, *Auditor.*

Approved.

C. S. MOREHEAD.

35 *Plaintiff's exhibit.*

STATE OF KENTUCKY, *Fayette circuit court:*

August term, 1856.

THE COMMONWEALTH OF KENTUCKY, plaintiff, *against* JOHN CORBIN, defendants } On petition.

AUGUST 12*th*, 1856.

Be it remembered, that heretofore, to wit, on the 12th day of August, 1856, the following order was entered herein, to wit:

The defendant filed his answer herein, to which he made oath, which is noted.

And afterwards, to wit, at a court continued and held in and for the circuit aforesaid, on the 20th day of August, 1856.

Ord. filing and Peto.

The plaintiff filed an amended petition herein, which is noted.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 21st day of August, 1856.

It is ordered that this case be contined until the next term.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 2nd day of February, 1857.

The answer of the defendant, Martha Ann Corbin, heretofore ledged and sworn to is noted.

36 And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 12th day of February, 1857.

This day came the parties, by their attorneys, and by consent, the law and facts in this case are submitted to the court.

This cause was thereupon heard.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 17th day of August, 1857.

The defendants this day filed an exhibit herein, which is noted.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 27th day of August, 1857.

It is ordered that this case be continued.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 12th day of August, 1858.

By consent this case is submitted to the court for a judgment.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 20th day of August, 1858.

37 The law and facts of this case having been, by consent, submitted to the court, it is adjudged that the plaintiff recover of the defendants the house and lot in the petition mentioned, and the deed, filed as evidence herein, of Thomas Bodley to Solomon Brindley, and that the plaintiff have an execution to obtain the possession of same, it is adjudged that the plaintiff recover of the defendants their costs herein.

True copies. Att.: JNO. B. NORTON, *C. F. C. C.*

And afterwards, to wit, on the 9th day of June, 1859, the following writ of habere facias pessessionen was issued on the judgment herein, to wit:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

Whereas, the commonwealth of Kentucky, by a judgment of the Fayette circuit court, rendered on the 20th day of August, 1858, recovered against John Corbin and Martha Ann Corbin, her term yet to come, in a certain house and lot situate in the county of Fayette, and city of Lexington, in the petition and deeds on file, mentioned and described, "beginning on Upper street, at the corner of Michial Clark's lot; thence with said Upper st. N. E. 50 feet; thence S. E. 140 feet, or to within ten feet of Bodley & Co.'s factory; thence S. W. 50 feet to Michial Clark's lot, and within his line N. W. to the beginning." And, whereas, it was ordered that a writ of
38 habera fawas pessessionen issue, &c. You are therefore commanded that you immediately and without delay cause the said commonwealth of Kentucky to have full and complete possession of the premises aforesaid, together with the appurtenances thereunto belonging, agreeably to the judgment aforesaid, and then make return how you have executed this writ to the judge of our Fayette circuit court, at the court-house in Lexington, on the 4th Monday in July next, and have then there this writ.

Witness, John B. Norton, clerk of our said court, at the court-house aforesaid, this 9th day of June, 1859, and in the 67th year of the commonwealth.

Att.: JOHN B. NORTON, *C. F. C. C.*

Came to hand June 9th, 1859, 10 o'clock a. m.

J. R. GROSS, *S. F. C.*

Stayed by writ of suspessedeas from court of appeals.

J. R. CROSS, *S. F. C.*

March 20th, 1865.—True copies.

Att.: JOHN B. NORTON, C. F. C. C.

Plaintiff's exhibit.

STATE OF KENTUCKY, *Fayette Circuit Court*:

Pleas held before the Honorable William C. Goodloe, judge of the court for the circuit aforesaid, at the court-house in the city of Lexington, on 20th day of Aug., 1858.

COMMONWEALTH OF KY., plaintiff,
vs.
JOHN CORBIN, defendant.

Be it remembered, that heretofore, to wit, on the 21st day
39 of July, 1856, the plaintiff, by her attorney, filed her petition in the clerk's office of the Fayette circuit court herein, in the words and figures following, viz:

Fayette circuit court.

COMMONWEALTH OF KENTUCKY, plaintiff
against
JOHN CORBIN, defendants. } Petition.

The commonwealth of Kentucky, then her agent, Thos. B. Baxter, states, that on the 28th day of Dec'r, 1808, Tho's Bodley, being the lawful owner of a certain lot of ground in the city of Lexington, beginning at Upper street, at the corner of Michael Clark's lot; thence with said Upper street N. E. 50 feet; thence S. E. 140 ft., or to within 10 feet of Bodley & Co's factory; thence S. W. 50 ft. to Michial Clark's lot, and with his line N. W. to beg. part, conveyed the same to a free man of color named Solomon Bundley. That said Bundley continued to be the owner of the same up to the day of his death, on the day of . That said Bundley, on the said day of , died intestate, and without legal heirs or representatives, or distributees, who could inherit from him, and that the com'th of K'y has become the owner of said lot. That, as the plaintiff understands, one John Corbin now has possession of said lot, and refuses to deliver the same up to plaintiff.

Wherefore, the plaintiff prays judgment for the recovery of the land, and other proper relief.

THO'S B. BAXTER, *Ag't Com'th of Ky.*
THO'S B. MONROE, JR., *P. Q.*

Copy deed from Bodley to Bundy.

40 This indenture, made this 28th day of Dec'r, in the year of our Lord 1808, between Thomas Bodley and Catharine, his wife, of the county of Fayette, and Com'nth of K'y, of the one part, and Solomon Bundy, of the county and com'nth af's'd, of the other part, witnesseth, that the said Thomas Bodley and wife, for and in consideration of the sum of $155, current money of K'y, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bar-

gained, and sold, and by these presents do grant, bargain, and sell, and confirm unto the said Solomon Bundy, his heirs or assigns, all that tract or parcel of land situate and being in the county of Fayette, in the town of Lexington, on the waters of town-fork of Elkhorn, containing 50 feet front and 140 feet back, and bounded as follows, to wit: Beginning on Upper street, at the corner of Michial Clark's lot; thence with said Upper st. N. E. 50 feet; thence S. E. about 140 feet, or to within 10 feet of Bodley & Co's factory; thence S. W. 50 feet to Michial Clark's lot, and with his line N. W. to the beginning, being part of cut lot, letter (M,) conveyed to said Bodley by John Sily, by deed duly recorded in the clerk's office of Fayette county, together with all and singular the premises thereunto belonging, or in anywise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said Solomon Bundy, his heirs and assigns, forever. And the said Tho's Bodly, and Catharine, his wife, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises unto the said
41 Solomon Bundy, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, do and will warrant and forever defend by these presents.

In witness whereof, the said Thomas Bodley, and Catharine, his wife, have hereunto set their hands and seals, the day and date first above written.

[SEAL.] THO'S BODLEY.

Acknowledged in presence of—
[SEAL.]

FAYETTE COUNTY CLERK'S OFFICE, *sct.*,
Dec'r 28*th*, 1808.

This indenture of bargain and sale from Thomas Bodley, and Catharine, his wife, to Solomon Bundy, was produced to me as cl'k of said county, and ack'd by s'd Thomas Bodley to be his act and deed, and is thereupon fully recorded in my office.

Att.: J. D. YOUNG, *Cl'k*.

FAYETTE COUNTY CLERK'S OFFICE,
March 9, 1809.

Catharine D. Bodley, wife of Thomas Bodley, and party to this indenture, was this day examined by me in the manner prescribed by law, and she freely and voluntarily relinquished her right of dower in the premises conveyed hereby, and ack'd the same to be her act and deed, and it is thereupon recorded in my office.

Att.: J. D. YOUNG.

A copy. Att:

JAMES A. GRINSTEAD, *C. F. C. C.*
By HENRY C. RICHARDSON,
D. C., F. C. C.

42 *Synopsis of summons.*

Summons against John Corbin. Executed July 22nd on John Corbin, Returned by the sheriff.

JOHN RODES, *D. S.*
For WALKER RODES, S. F. C.

Synopsis of summons.

Summons against John Corbin and Martha Ann Corbin; executed Jan. 12th, 1857, on Martha A. Corbin.

JAS. DUDLEY, SR. *D. S.*
For A. F. DUDLEY, S. F. C.

And afterwards, to wit, at a court, continued and held for the circuit aforesaid, on the 12th Aug't, 1856.

The defendant filed his answer herein, to which he made oath, which is noted.

COMMONWEALTH *against* JOHN CORBIN.

The defendant, John Corbin, states that he knows nothing of the claim to the property mentioned set up by plaintiff, Tho. Bundley, in his petition, or from any other source, nor of the other facts going to make out a claim set up in plaintiff's petition, and has no information on which to found a belief, he therefore denies them, and requires proof. Defendant has no claim to said property in his own right; it belongs to his wife, Martha Ann Corbin, having been deeded to her by her grandmother, Ann Mitchell, and the deed is of record in the Fayette county court's clerk's office. The property has long been in possession of his wife, and he believes she claims it thro' the title above set forth, and possession to herself and those under whom she claims; wherefore he prays to be dismissed with his cost.

RRECKENRIDGE & BECK, *P. Q.*

Sworn to before me by John Corbin, this 12th day of August, 1856.
Att.: JAMES W. WOOD, *C. F. C. C.*

43 And afterwards, to wit, at a court, continued and held for the circuit aforesaid, August 20th, 1856.

The defendant filed an amended petition herein, which is noted.

Layette circuit court.

COMMONWEALTH OF KENTUCKY, *vs.* JOHN CORBIN & MARTHA ANN Corbin. — Amended petition.

The plaintiff, thro' her agent, Tho. B. Baxter, states, by way of amendment to the original petition filed in this case, that the lot of ground mentioned in said petition, and now in controversy in this

suit, was, on the 9th January, 1846, sold by the sheriff of Fayette county, under a writ of ven. exponas, from the Franklin circuit court, against the estate of Wm. S. Barry, dec'd, when James Marsh became the purchaser, with M. Thwaitt's security, and by their order the deed was made to Martha Ann Corbin for life, remainder to her daughter, Martha A. That said Martha Ann Corbin is the wife of the defendant, John Corbin, and, as plaintiff understands, sets up some claim to said lot of ground.

Wherefore, he prays that said Martha Ann may be made defendant to this suit, and other relief as prayed in the original petition.

THOS. B. BAXTER, *Agent.*
THOS. B. MONROE, *for Def't.*

And afterwards, to wit, at a court, continued and held for the circuit aforesaid, August 20th, 1856.

It is ordered that this cause be continued until the next term.

44 And afterwards, to wit, at a court, continued and held for the circuit aforesaid, Feb'y 2nd, 1857.

The answer of the defendant, Martha Ann Corbin, heretofore leged and sworn to, is now noted.

Fayette circuit court.

COM'TH OF KY.
vs.
MARTHA ANN CORBIN, &c.

Answer.

The defendant, Martha Ann Corbin, for answer to the petition and amended petition, states that she has no knowledge of any of the facts set up in the petitions as the foundation of plaintiff's claim, and no means of forming a belief, and therefore denies them all and requires proof. She claims the property in controversy by virtue of deed from her grandmother, Ann Mitchell, as set up in the answer herein of her husband, John Corbin, and of possession thro' herself and her grandmother, strengthened by the deed given to her by order of March & Thwaiths, as stated in plaintiff's amended petition. Wherefore she prays that plaintiff's petition may be dismissed, and that she may have her costs and for all proper relief.

MARTHA ANN CORBIN.
BRECKINRIDGE & BECK, *Att'ys.*

Sworn to before me by Martha Ann Corbin, this 20th day of January, 1857.

Att.: JOHN B. NORTON, *Cl'k.*

And afterwards, to wit, at a court, continued and held for the circuit aforesaid, Feb'y 11th, 1857.

45 This day came the parties, by their attorneys, and by consent the law and facts in this case are submitted to the court. This cause was thereupon heard.

And afterwards, to wit, at a court, continued and held for the circuit aforesaid, August 17th, 1857.

The defendants this day filed an exhibit herein which is noted.

Exhibit of defendants.

This indenture, made and executed this 15th day of Aug., 1846, between J. R. Sloan, sheriff of Fayette county and State of Ky., of the first part, and Martha Ann Corbin, of the second part, witnesseth: That whereas, a writ of execution called a ven. exponas, issued from the clerk's office of the Franklin circuit court, dated 30th Nov. 1842, and returnable the 3rd Monday in January, 1843, directed to the sheriff of Fayette county, and commanding him to expose to sale that estate of W. T. Barry, dec'd, in the hands of Joseph Ficklin, his adm'r, and James Taylor, jr., and Susan his wife, A. M. Barry, and A. J. Barry, his heirs, and Tho. Triplett. dec'd, in the hands of H. Blanton, his ex'or, to be administered, to wit: a lot of ground in the city of Lexington, bounded as follows, about 48 feet on the S. E. side of Upper street, opposite the lot of Col. Dunham, on the N. E. by a lot of W. H. Richardson, on the S. W. by the lot of Hannah Clark, and running back about 150 feet to the lot of R. Higgins, sen'r, which had been levied on by said sheriff, by virtue of an execution called a fiera facias issued from said court
46 to satisfy the president, directors & co. of the bank of Ky., the sum of $991 99, with six per cent. pr. ann. interest thereon, from the 15th Aug., 1827, til paid, and $142 costs, whereof, in said court they had recovered ex'or ag't said Barry's adm'r and heirs, and Tripletts' ex'ors, by virtue of a judgment of s'd court, and whereas, s'd writ came to the hands of s'd Sloan, sh'ff, as ass'd; and agreeably to its command, he proceeded on Monday, the 9th day of January, 1843, that being county court day of Fayette county, at the court-house door in Lexington, to offer the s'd lot for sale to the highest bidder, the purchaser to give bond, with approved security, to have force and effect of a replevin bond at three month's cridit, the same having been advertised according to law, when James March became (being the highest bidder) the purchase thereof for the sum of $151, who executed bond with Marcy Thwaits as sec'y, and whereas, s'd James March & Marcy Thwaits, by their written order, directed s'd Sloan to convey s'd lot of Martha Ann Corbin, during her life and for her seperate use, and after her death to her daughter Martha Ann during life, and if life and if she leaves decendants to go to them but with liberty to her, devise it to whom she pleases, and if she dies leaving no decendants living at her death, then to Hartwell Ethering in fee simple. Now, in consideration of the premesis, and of one dollar in hand paid, the receipt whereof is hereby ack'd, the party of the first part has bargained and sold, and by these presents doth convey, release, and confirm unto said
47 Martha Ann Corbin, all that lot before described, to have and to hold to her during her life, and after her death, remainder to her daughter Martha Ann, for and during her life, and if she leave

decendants then remainder to them if fee simple, but with liberty to her to devise it to whom she pleases, but if she leave no decendants living at her death, then remainder to Hartwell Etherington in fee simple. To be held during the life of said party of the second part during her life to her separate use, and the party of the first part doth warrant said lot to said party of the 2nd part, so far as by law he bound to warrant and no further, and not to be personally bound. In testimony whereof, said party of the first part hath hereunto set his hands and seal the day and year first above-written.

S. R. SLOAN, [SEAL.]
Sh'ff of Fayette County.

I hereby direct that the sheriff make a deed for the lot sold under an ex'on in favor of the bank of Ky. ag'st Wm. T. Barry's heirs to Martha Ann Corbin, during her life and for her separate use and after her death to her daughter Martha Ann during her life, and if she leaves descendants to go to them, but with liberty to her to devise it to whom she pleases, and if she dies leaving no descendants living at her death, then to Hartwell Etherington in fee simple.

Jan. 3rd, 1845.

her
ANN × MITCHELL.
mark.

Test: M. C. JOHNSON.

48 The sheriff will make a deed as above-directed.

M. THWAITS.
JAS. MARCH.

COMMONWEALTH OF KY., *Fayette county, sct:*

I, James A. Grinstead, clerk of the county court for the county af's'd, do certify that this deed from James R. Sloan, sh'ff of Fayette county, to Martha Ann Corbin, was this day produced to me in my office, and acknowledged by the s'd James R. Sloan, sh'ff as af's'd, to be his act and deed and ordered to be recorded.

Thereupon the s'd deed together with the orders thereto attached and this certificate, hath been duly admitted to record in my office.

Given under my hand this 18th day of Aug., 1846.

Att.: JAMES A. GRINSTEAD, *C. F. C. C.*
By WM. R. BRADFORD, *D. C.*

A copy. Att.: JAMES A. GRINSTEAD, *C. F. C. C.*

And afterwards, to wit, at a court, cont'd and held for the circuit af's'd, Aug. 27, 1857. It is ordered that this case be cont'd.

And afterwards, to wit, at a court, cont'd and held for the circuit af's'd, Aug. 12th, 1857. By consent this case is submitted to the court for a judgment.

And afterwards, to wit, at a court, cont'd and held for the circuit af's'd, Aug. 20th, 1858. The law and facts in this case having been by consent submitted to the court. It is adjudged that the
49 pl'ff recover of the def'ts the house and lot in the petition mentioned and the same described in the deed filed as evidence

herein of Thomas Bodley to Solomon Bundley, and that the plaintiff have an execution to obtain possession of same, and it is adjudged that the plaintiff recover of the defendants their costs herein.

Deposition of Marcy Twaits.

Deponent being of lawful age, and first duly sworn, deposes as follows:

By defendant. I bought that log house on the hill at a sheriff's sale; all the title and right of Wm. T. Barry in that house, under a mortgage, as it seems to the Bank of the Commonwealth of Ky., Blanton, agent. I got a title, and thought a good one. I sold it right off to a woman for the benefit of her children. I passed the same title I got. The woman to whom I sold was Mrs. Corbin. The deed on record in the county clerk's office is referred to as showing more particularly the nature of the transaction. Mrs. Corbin occupied it for some time after the sale, but does not now. It was known as Barry's property long before the sale.

(Excepted to by pl'ff.)

I know nothing of the title of Barry. And further saith not.

MACY THWAITS.

Also, the deposition of Joseph Ficklin, taken at his residence, on the 15th Aug., 1857.

On interrogatory of def'ts. I had charge of W. T. Barry's estate as agent in 1829, and administered on his estate in 1835. At that time (1829) there was a house and lot nearly opposite Col. Dunham's, which I took charge of as his property, and continued to have charge of it to 1844, and longer. I don't know how much longer. During that time I put tenants in it as Barry's property. I think I understood it had been in Barry's possession from 1820.

(Excepted to.)

I wanted to sell it about 1840, but Judge Hickey, who had married Mr. Barry's widow, and I differed as to the interest of Barry's widow, and I did not sell. I know that the Com'th Bank had pressing claims upon the estate of Barry during the time I was agent, as above mentioned. I do not know how Barry came into possession of the property, but understood he got it for some debt owed him by Sol. Bundley in assistance in getting his freedom, or of some of his family.

(Excepted to.)

And further saith not.

JOSEPH FICKLIN.

Cross-examined:

The above deposition taken by consent of pl'ff and Mrs. Ann Corbin. They are to be filed and used in the trial in present form, without certificate.

Aug. 13th, 1857.

BRECKINRIDGE & BECK, *Att'y.*
T. B. MONROE, JR., *Att'y.*

Testimony of John Myres.

COMMONWEALTH OF KY.
vs
JOHN CORBIN and WIFE.

John Myres stated on trial, and now states, that in the year
51 1833 a negroe man, named Peter, a carpenter, called Barry's Pete, died in the house in controversy. I recollect that he made a coffin for Lewis Sayre the day before he died. As soon as Pete died, one of Wm. T. Barry's sons came there, and moved away Peter's effects, and paid me some $8 or $9 to fix up the house and fence. The roof was patched and a door hung.

his
JOHN + MYRES.
mark.

Attest: JAMES B. BECK.

Sworn to John Myres, Aug. 19th, 1858.
Att: J. B. NORTON, *C.*

B. C. Wood states that he is now satisfied, on reflection and by conversation with Myres and others, that it was Peter, the carpenter, that died in the house in controversy in 1833. He was mistaken in the name when he made his first statement.

B. C. WOOD.

Memo. testimony.

COMMONWEALTH
vs.
CORBIN.

The witness, Ben. Wood, stated that he knew Solomon Bundley, who lived in the house and on the lot sued for in this case; that said Bundley held and occupied the house as his own, and died in such occupancy in 1833. Other witnesses proved that Bundley died without legal heirs, by which his estate escheated to the com'th.

T. B. MONROE, JR., *P. Q.*

STATE OF KENTUCKY, *Fayette circuit, sct:*

I, John B. Norton, clerk of the court for the circuit af's'd,
52 do certify that the foregoing 15 pages, and upwards, contain a full, true, and complete transcript of the record and proceedings had in the case mentioned in the caption hereof.

Given under my hand this 14 day of June, 1859.
Att.: JOHN B. NORTON, *C. F. C. C.*

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The appellant resides in Fayette county, State of K'y.

CLERK'S OFFICE, COURT OF APPEALS.

I, Leslie Combs, clerk of the court of appeals, do hereby certify, that the foregoing 12 pages, and upwards, of written paper, contain a full, true, and complete transcript of a record from the Fayette circuit court of the Commonwealth of Kentucky, against John Corbin *et al*, and filed in my office on the 15th day of June,
53 1859, as appears by the certificate of John B. Norton, clerk of said court, bearing date 14th day of June, 1859, and the foregoing 12 pages and upwards is a true copy of said record.

Given under my hand, as clerk of the court of appeals, this 4th day of August, 1865.

LESLIE COMBS, *C. C. A.*,
By R. R. ROLLINS, *D. C.*

Fee, $6 90.

And afterwards, to wit, at a special chancery term held in and for the circuit aforesaid, on the 30th day of October, 1865:

Order withdr'g exhibit by pl'ff.

On motion of the plaintiff, leave is given him to withdraw the exhibited copy of the mandate of the court of appeals on file herein, and substitute in lieu thereof a correct copy of same, which was thereupon filed and noted, and is in the following words and figures, to wit:

THE STATE OF KENTUCKY,
THE COURT OF APPEALS, *Dec. 9th*, 1859.

JOHN CORBIN, appellant,
against
COMMONWEALTH OF KENTUCKY, appellee. } Appeal from the Fayette circuit court.

Plaintiff's exhibit.

The court being sufficiently advised, it seems to them that there is no error in the judgment herein. It is, therefore, considered that said judgment be affirmed, which is ordered to be certified to said court.

A copy. Attest : LESLIE COMBS, *C. C. A.*

54 And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 8th day of February, 1866:

Order, filing, ans. Corbin, jr.

The defendant, Martha A. Corbin, the younger, filed an amended answer and cross-petition herein, to which she heretofore made oath, which is noted.

Amended answer and cross-petio. of Corbin, jr.

Which is in the following words and figures, to wit: The defendant, Martha Corbin, the younger, states that she is now of full age, and for amended answer and cross-petition herein, says she has read the answer of her father and mother herein, and adopt all the statements and defences therein contained, and here report them all herself. (See page for answer of Corbin and wife.) She was not a party to said suit of the commonwealth for the recovery of said lot, and is not bound by the judgement therein. She says that William T. Barry was the owner of the lot sued for, and in the adverse possession thereof, claiming it as his own as early as about the year 1820, which was thirteen years before the death of said Bundy or Brindly, from whom it is claimed to have escheated, and that he continued in the open adverse possession thereof as long as he lived, and his heirs continued in the like adverse possession, claiming it as their own, until it was sold under the execution from the Franklin circuit court, upon a judgement of that court in
55 favor of the old Bank of Kentucky *vs.* the heirs of said Barry and others, and having been purchased by Thwaits and March, was conveyed by the sheriff, by their direction, to this defendant's mother, for her separate use for life, with remainder to this defendant for life, and to her decendants, but with the power of disposition in fee, and in default of decendants to go to one Hartwell Etherington.

A copy of said deed, contained in the record, exhibited by the plaintiff, is refered to as a part of this answer. Under that conveyance the said Martha A. Corbin, the elder, has had possession of said lot, claiming it as her own, adversely to all the world, except the remainder interest under the deed, and holding the possession for herself and for this defendant, as owner of the remainder interest, ever since the date thereof. The said Bank of Kentucky, under whose judgement and by whose direction it was sold, was a mere agency of the State of Kentucky. The property was sold under said execution as assets in the hands of the heirs of Wm. T. Barry, derived by decent from him. The money for which it sold was paid to the officer of the State managing the bank, and has gone into treasury of the State. This defendant relies that the commonwealth will not be presumed to say, and that her officers and all claiming under the State, including said Mulligan, are now estopped to say, that the property did not belong to Barry, and did not descend to his heirs, but had escheated.

56 The said Martha A. Corbin, the elder, was in the adverse possession of said lot when the agreement for the sale thereof is claimed by plaintiff to have been made by Monroe, when said sale was approved by the auditor, and when the conveyance thereof was made by the auditor to Monroe & Mulligan, and of half of it by Monroe to Mulligan.

She relies that each of these acts, the agreement, the approval, and the two attempted conveyances were and are champertons, unauthorized and void.

This defendant is the owner of said lot in remainder, after the death of her mother.

The plaintiff claims the fee simple therein, under his alleged purchases, and his claim is a cloud upon her title. Moreover, if he should succeed against her mother, and recover judgement herein, for the possession of the lot, it might operate as a bar to her right when the life estate falls in, unless some reservation in favor of her future interest be made. Wherefore she makes this a cross, petition against the plaintiff, and prays that his claim against her may be barred; that her right to the said lot in remainder, after her mother's life, may be established and guarded in any judgement which may be rendered, and that she may have all proper relief.

HUNT, BECK & CLARK, *Att'ys.*

STATE OF KENTUCKY, *Fayette County:*

57 Martha A. Corbin says that the statements made in the above-amended answer and cross-petition are true.

MISS MARTHA A. CORBIN.

And afterwards, to wit: at a court, continued and held in and for the circuit aforesaid, on the 26th day of February, 1866.

Order filing ex'b't by def't.

The defendant filed an exhibit herein, which is noted.

Said exhibit is in the following words and figures, to wit:

Defendant's exhibit.

Kentucky, Franklin circuit court.

MAY 23RD, 1842.

THE PRESIDENT, DIRECTORS, and COMPANY of the Bank of Kentucky, plaintiffs,
vs.
JOSEPH FICKLIN, adm'r of the estate of WILLIAM T. BARRY, dec'd, James Taylor, jr., and Susan his wife, Armstead M. Barry, and Andrew Jackson Barry, heirs of W. T. Barry, dec'd, Harrison Blanton, ex'or of the last will and testament of Thomas Triplett, dec'd, and Francis Moore, defendants. } Scifee to revive judgement.

This day come the plaintiffs, by their attorney, and it appearing,

to the satisfaction of the court, that all the defendants, except Francis Moore, have been duly served with the process herein, and as to him there has been returns of three nihils by the sheriff
58 of Fayette county, and said defendants, although solemly called, made default.

It is therefore considered by the court, that the plaintiff have execution against said defendants for the sum of nine hundred and ninety-one dollars 99 cents, with interest thereon, at the rate of six per cent. per annum, from the 15th day of August, 1827, until paid, being the debt in the scierifacias mentioned, also their costs herein expended; to be levied first, of the assets in the hands of said administrator and executor to be admistered, if sufficient, if not then of the estate which has come to the said heirs of Barry by descent from their said ancestor.

A copy. Att.: W. FRANKLIN,
C. F. C. C.

The commonwealth of Kentucky of the sheriff of Fayette county, greeting:

We command you, that of the estate of W. T. Barry, dec'd, in the hands of Joseph Ficklin, his adm'r, to be administered, and Thomas Triplett, dec'd, in the hands of Harrison Blanton, his ex'or, to be administered, if sufficient, if not, then of the estate of said Barry, which hath come to James Taylor, jr., and Susan his wife, Armstead M. Barry, and Andrew Jackson Barry, his heirs by decent, you cause to be made the sum of nine hundred and ninety-one dollars 99 cts., with interest from the 15th day of August, 1827, until paid, which the president, directors, and com-
59 pany of the Bank of Kentucky, lately in our Franklin circuit, recovered against them for debt, also the sum of $13\frac{57}{100}$ costs, whereof said Barry's adm'r and heirs, and Triplett's ex'ors, are convict, as appears to us of record; and that you have the same before the judge of our said court, at the clerk's office, on the 3rd Monday in September next, to render to the said president, &c., the debt, interest, and cost aforesaid, and have then there this writ.

Witness, Philip Swigert, clerk of our said court, at the courthouse, this 21st day of July, 1842, and in the 51st year of the commonwealth.

P. SWIGERT,
C. F. C. C.

Came to hand, 20th August, 1842.

J. R. SLOAN, *S. F. C. C.*

Levied this execution before the return day thereof, on a lot of ground in the city of Lexington, bounded as follows, to wit: about 48 feet on the S. E. side of Upper street, opposite the lot of Col. Dunham; bounded on the N. E. side by a lot of W. H. Richardson; on the S. W. by the lot of Hanna Clark, and running back about a 150 feet to the lot of R. Higgins, sen., which was advertised for sale

according to law, to the September county court day, being the 12th day of Sept., 1842, at the court-house door in Lexington, at which time and place I offered the property aforesaid for sale as afs'd, but was not sold for want of bidders. Said property was levied on as property descended from W. T. Barry, dec'd, to the heirs
60 within named. No other property being found in my county.

J. R. SLOAN, *S. F. C.*

On the 30th day of November, 1842, a venditioni exponas issued, directed to sheriff of Fayette county, directing a sale of the property levied on under the foregoing execution, and the same has never been returned.

At't: W. FRANKLIN, *C. F. C. C.*
Copies. At't: W. FRANKLIN, *C. F. C. C.*

And afterwards, to wit, at a court continued and held in and for the circuit aforesaid, on the 27th day of February, 1866.

Order filing an's to × peto.

The plaintiff filed his answer to the cross-petition herein, which was sworn to and noted.

An's to cross-petition.

Which is in the following words and figures, to wit:

The plaintiff, Dennis Mulligan, for answer to cross-petition of Martha Corbin, jr., was made a party to this suit in his original petition and in all amendments thereto, that a guardian ad litem was appointed for her, and the proceedings against her are regular. Plaintiff makes his original petition and all amendments thereto, heretofore made in his said suit against the said John Corbin, Martha A. Corbin, and the said Martha Corbin, jr., an answer to her cross-petition, and he reasserts and reaffirms every allegation, assertion, posi-
61 tion and argument therein, together with all deeds, titles and exhibits filed therein, and made part thereof, and makes the same an answer to her cross-petition, and all petitions, deeds, titles and exhibits, and pleads them in bar to her cross-petition, and hereby refers to them, and makes them part of this answer. Plaintiff, Mulligan, denies that said William T. Barry was the owner of the said house and lot sued for, as far back as 1820, or that he ever owned it, and denies that said William T. Barry ever had any adverse legal possession of said house and lot, or so held it during the time mentioned in said cross-petition. He denies that said Barry had any right to hold possession of said house and lot, as the same was an escheat to the commonwealth of Kentucky; the same was the property of Solomon Brindley, who died intestate and without heirs, which facts are fully established by the result of the suit of the commonwealth of Kentucky, against the said John Corbin, and Martha A. Corbin; the record whereof is here referred to, and made part hereof.

62 Defendant denies that said William T. Barry was in legal adverse possession of said house and lot before the death of

said Solomon Brindley, or that he was ever in legal adverse possession of said escheat or house and lot as long as lived, or that his heirs continued in like legal advere possession after his death, claiming it as their own until the time it was pretended to have been sold under an execution from the Franklin circuit court.

Plaintiff denies that the said pretended sale of said escheated house and lot under execution from the Franklin circuit court, "in favor of the Bank of Ky., against the heirs of said William T. Barry, could or did confer any title therein to the said Thwaits and March, or that the pretended conveyance by the sheriff under the direction of the Thwaits and March could or did convey any title to the said Martha A. Corbin for life, with remainder to Martha Corbin, jr. for life, and to her descendants with power of disposition in default of descendants, to go to one Hartwell Edrington; or could convey any title to said escheat or house and lot, because he says the said
63 William T. Barry and his heirs, and all claiming under them, never were the owners of said escheated house and lot, and never were in legal adverse possession thereof.

Plaintiff, Mulligan, further says, that said defendants were never in the adverse legal possession of said escheated house and lot under the said pretended conveyance by said sheriff; said sale was null and void. Plaintiff denies that the late Bank of Kentucky was a mere agent of the State of Ky. He denies that the officers, managers, or directors of said Bank of Kentucky, were properly thereby, the officers of the State of Kentucky. Plaintiff knows not where the money pretended to have been paid by the parties to said pretended sale of said escheat by said sheriff went to, nor has he sufficient, *nor has he sufficient* knowledge thereof to form a belief, and denies that it ought to have any bearing on this suit, and requires proof.

Plaintiff hopes, says, alleges and relys, that the State of Kentucky will be permitted to say, and that her officers and all claiming under the State, together with plaintiff, Mulligan, and not estop-
64 ped to say, as the plaintiff does say, that the said escheated property does not belong said William T. Barry, and did not descend to his heirs, and that said property was escheated to the State of Kentucky.

Said plaintiff, Mulligan, says that the said John Corbin, and Martha A. Corbin, the elder, were not in adverse legal possession of said escheated house and lot when the agreement for the purchase and sale thereof by the State of Kentucky, through Thomas B. Monroe, was made, nor when the conveyances thereof was made by the auditor to Monroe and Mulligan, nor by Monroe and wife to Mulligan.

Plaintiff, Mulligan, says that the said John Corbin took a lease of said escheated house and lot under him, the plaintiff, and held the same as his tenant; and the said Martha A. Corbin and Martha Corbin lived with him, the said John Corbin, in said house and lot under said lease, and acquired in said lease, with notice thereof, and were in as his tenants, and held under him; and as such, his
65 tenants, he hopes will not be permitted to dispute his title, and are estopped by said lease, and plaintiff says were con-

sequently his tenants, and held under him when the approval of the sale by the State of Kentucky, through Thomas B. Monroe, was made by the auditor, and when the conveyance was made by the auditor to Monroe and Mulligan, and by Monroe and wife to Mulligan; and this he sets up and charges.

Plaintiff denies the charges of champerty, and denies that all, or any part of the contracts or conveyances between the State of Kentucky and Thomas B. Monroe, or between said Thomas B. Monroe and the State of Kentucky, or between the State of Kentucky and himself, or the State of Ky., or between Monroe and himself, or between himself and the State of Ky., or between the State of Ky. and himself and Thos. B. Monroe, or between the State of Ky. and himself, or between said Monroe and himself, or that any or either of the contracts or conveyance are champertons unauthorized or void.

Plaintiff denies that said def't, Martha A. Corbin, jr., is the owner of said escheated house and lot in remainder, after the death of her mother.

66 Plaintiff denies every material allegation in defendant's, Martha Corbin, jr., answer and cross bill inconsistent with his title, and requires proof, and denies that she has any right, title, or interest in or to said escheated house and lot, and denies that she is entitled to any interposition, or reservation, or interfearance in her favour by the court, in case plaintiff succeeds in this suit, as he believes he ought to succeed; and plaintiff says that defendant, Martha Corbin, jr., has no remainder to be protected or guarded.

Plaintiff says if said Martha Corbin, jr., was not a party to the suit of the commonwealth of Kentucky against John Corbin and Martha A. Corbin, it was her own fault, as she might have made herself a party thereto, since she had notice of said suit.

Plaintiff, as already set forth in his petition and amendments thereto, says he is the owner in fee simple of said escheated house and lot; that he derives his title from the State of Kentucky; that it was the property of Solomon Brindley, who died without heirs

67 and intestate. The entire title (to the said escheated house and lot) of plaintiff is set forth in his petition and amendments thereto, and the record of the suit of the commonwealth of Ky. against John Corbin and Martha A. Corbin, and all the titles, deeds, exhibits, and proofs filed, and to be filed by him therein, are here again referred to and made part hereof.

Plaintiff denies that the said Martha A. Corbin has been in the legal adverse possession of said escheated house and lot ever since the said pretended sale and conveyance by said sheriff under said execution from the Franklin circuit court.

Therefore plaintiff prays judgment, as he before prayed, and all proper relief.

D. MULLIGAN.
McCOY & HUSTON, *P. Q.*

Plaintiff, Denies Mulligan, makes affidavit, and says he believes the facts stated in the above answer are true.

D. MULLIGAN.

Ord. filing except to depo.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 12th day of June, 1866, the plaintiff filed exceptions to depositions herein, which are noted, which ex-
68 ceptions are in the following words and figures, to wit:

Pl'ffs exceptions to depo's.

Plaintiff, Denies Mulligan, excepts to the within deposition of Hartwell Ethrington, because he is a party interested in the result of this suit of Mulligan *vs.* Corbin, &c., he being an attempted remainder man in fee simple, under a deed by sheriff of Fayette county, after the death of Martha Corbin, jr., one of the defendants in this suit.

HUSTON & McCOY, *P. Q.*

Ord. filing brief of pl'ff.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 15th day of August, 1866, the plaintiff, by his counsel, filed a brief herein, which is noted.

Ord. filing excepts to depo's.

Defendants filed exceptions to depositions and deed herein, which are noted, which are in the words and figures, to wit:

Defendants excepting to depositions.

The defendants except to the entire deposition of Thomas B. Monroe herein, and to all the testimony of John McCoy, esq., and Hon. R. A. Buckner, as to the contents and statements of said deposition, and to said Monroe's testimony in whatever shape or mode it
69 may be attempted to be used, because said Monroe was, at the time he deposed and continued till the time of his death, interested in the result of this suit by reason of his warranty contained in the deed exhibited by plaintiff.

2nd. They accept to the deed of the auditor to Monroe & Mulligan, exhibited by plaintiff, and move to exclude it from the record.

1st. Because no sale of the lot therein mentioned was made to Mulligan by any authorized agent of the State.

2d. Because the auditor had no power to authorize a sale or make a conveyance of the lot after the passage of the act of the legislature granting it to the defendant, Martha A. Corbin, and her daughter.

3d. Because the purchase money was not paid into the treasury.

4th. Because it was champertons and void.

HUNT & BECK, *P. D.*

Ord. hearing.

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 16th day of August, 1866.

This cause was this day heard.

70 *Judgment.*

And afterwards, to wit, at a court, continued and held in and for the circuit aforesaid, on the 17th day of August, 1866.

This action having been heard, and the court advised, orders and adjudges that the plaintiff, under his purchase and sale from the auditor, is entitled to the house and lot in the pleadings mentioned, and to the possession thereof.

It is adjudged that defendant surrender to the plaintiff the possession of said house and lot, and that the sheriff place the plaintiff in possession, and that defendants pay to plaintiff his cost herein.

Def'ts except to judg't and app. granted.

The defendants except to the judgment herein, and on their motion an appeal is granted them from the judgment herein to the court of appeals.

Ord. with'd.—Brief for Pl'ff.

And afterwards, to wit, on the 18th day of August, 1866.

The plaintiff, by his attorney, Jno. McCoy, by leave of court, withdraw his brief on file herein.

And afterwards, to wit, on the 1st day of September, 1866, the defendants executed the following supersedeas bond herein, to wit:

71 *Supersedeas bond.*

JOHN CORBIN & OTHERS, appellants,
against
DENNIS MULLIGAN, appellee.

On appeal from a judg't Fayett ct. c., rendered Aug. 17, 1866.

Whereas, said appellants have taken an appeal from a judgment of the Fayette circuit court, rendered at its August term, 1866, (in the equitable action of Dennis Mulligan *against* John Corbin and others,) against them in favor of the appellee, for surrendering the possession of a house and lot with costs, and the appellants desire to supersede the said judgment.

Now we, John Corbin & others, principals, and Samuel Devore, surety, hereby covenant to and with the appellee, Dennis Mulligan, that the appellants will pay to the appellee all costs and damages that may be adjudged against the appellants on the appeal; and also that they will satisfy and perform the said judgment in case it shall be affirmed, and any judgment or order which the court of appeals may render or order to be rendered by the inferior court, not exceeding in amount or value the judgment aforesaid; and also pay all rents, hire, or damage which, during the pendency of the appeal, may accrue

on any of the property of which the appellee is kept out of
72 possession by reason of the appeal.
Witness, our hands this 1st day of Setember, 1866.

JOHN CORBIN.
SAMUEL DEVORE.

Att.: CHAS. F. LOWNY,
D. C. F. C. C.

STATE OF KENTUCKY,
Fayette County & Circuit, set:

Samuel Devore states that he is a resident of the State of Ky., that he is worth $10,000 beyond the amount of his debts, and has property in said State subject to execution of the value of $10,000.

SAMUEL DEVORE.

Sworn to before me, by Samuel Devore, this 1st day of Sept. 1866.
Att.: CHAS. F. LOWNY,
D. C. F. C. C.

Plaintiff's depositions.

They deposition of John McCoy taken on the 2nd day of August, 1866.

John McCoy's deposition.

Question by plaintiff.—State if you know the parties, and your relationship to either of them, and also state what you know of the loss of the papers of a former suit of law, between the parties for same matter in this court, and what exhibits and depositions taken and filed regularly in said suits at law are lost, and the con-
73 tents of the same, as well as you can recollect, and your connection with said former suit. State all you know about it.

Answer. I know the parties, Dennis Mulligan is plaintiff. John Corbin, Martha A. Corbin, & Martha Corbin, jr., are defendants. I know Mulligan, the pl'ff, and John Corbin, defendant, personally, the other two defendants I only know by reputation. Mulligan is my brother-in-law; there was a former suit at law in the Fayette circuit court about the same subject matter now in controversy in this suit between the same parties in that suit. R. A. Buckner, W. A. Dudley & myself were lawyers in behalf of pl'ff, Mulligan. To the best of my knowledge, all the papers and exhibits in the suit at law here spoken of were lost, that is the information I have from the clerk of the court, & all the lawyers concerned in the case on both sides. Among the exhibits regularly filed and lost were this original contract of sale and purchase between T. B. Monroe, jr., as agent of the State of Kentucky.
& Dennis Mulligan, as purchaser, in relation to the house and lot
74 lot now in controversy between plaintiff, Mulligan, and defendants, the Corbins, the house and & lot was an escheat to the commonwealth of *of* Kentucky; this contract to the best of my

recollection, was in the handwriting of T. B. Monroe, jr. Also, a certified copy of the receipt of the treasurer of the State of Kentucky for the State's part of the price of said house & lot; also, a certified copy of the deed of the commonwealth of Ky. to T. B. Monroe, jr., of the half of said house & lot, & the deed of the commonwealth of Ky. to Dennis Mulligan of the other half of the said house and lot; the deeds were signed by Grant Green, auditor of the State of Ky., likewise a deed by T. B. Monroe, jr., & wife, to Dennis Mulligan, of T. B. Monroe, jr.'s part of said house & lot; likewise a certified copy of the report to Grant Green, auditor, of the sale of said house and — by T. B. Monroe, jr., to Dennis Mulligan, and the approval of said report by the auditor of Ky., Grant Green, together with the deposition of Grant Green; also, the deposition of T. B. Monroe, jr, secretary of state of the State of Kentucky, taken in behalf of
75 Dennis Mulligan, the pl'ff; likewise a lease from Dennis Mulligan to John Corbin, the defendant, by which lease Corbin held said house & lot, now in controversy, as the tenant of Dennis Mulligan, the plaintiff, the deposition of Thomas B. Monroe, jr., here spoken of was taken in the city of Frankfort, at the office of Mr. Hord, an examiner; I acted as the attorney of Dennis Mulligan, and Judge George Robertson as attorney for defendants. Thomas B. Monroe, jr., was then about to leave Ky. and to go to the southern confedaracy, when he was killed, and he is now dead.

Thomas B. Monroe, jr., wrote his own deposition. I saw him write it, and heard him read it over; he stated in his deposition that his report of the sale of the house and lot now in controversy to Dennis Mulligan, which report he made to Grant Green, auditor of the State of Ky., was approved by Grant Green, auditor of Kentucky, before the governor of Kentucky approved the act of the legislature of Ky., which was about the State's interest in said house and lot to the Corbins; he, Thomas B. Monroe, jr., stated distinctly in
76 his disposition that at the time of the approval of said report of sale and said act of the legislature, he, Thomas B. Monroe, jr., was secretary of state of the State of Kentucky, and it was his duty to carry the acts of the legislature to the governor and obtain his signature thereto, and consequently he knew when they were approved, and that he knew the report of sale was approved by the auditor before the Corbin act of the legislature was approved by the governor, and he said distinctly that of that he could not be mistaken—he knew it; there may be, and doubtless were, other proper exhibits in the case which I do not now recollect, but which may occur to my mind on a farther examination by some of the parties. I have no doubt but certified copies *certified copies* of copies of all the exhibits can be obtained, except the deposition of Thomas B. Monroe, jr., and the lease of the pr'm'se made by Mulligan to Corbin, which are lost. The deposition of Grant Green can be retaken, I suppose, as he is living. I now also recollect that a certified copy of the contract of the State of Ky. with Thomas B. Monroe,
77 jr., as attorney to recover said house and lot as an escheat to the State of Ky., by which contract Thomas B. Monroe, jr., was

entitled to one-half of said house and lot for the recovery of the same was lost, it having been filed regularly as an exhibit; it was signed by C. S. Morehead, gov. of Ky.; James Harlan, attorney general; Thomas S. Page, auditor of Ky., and Thomas B. Monroe, jr. Thomas B. Monroe, jr., did recover the said house and lot as an escheat to the commonwealth of Ky. I know that Mulligan was in possession of the said house and lot by his lease to Corbin, and Corbin held under him, but the date of the lease I don't recollect. I don't think the lease was signed by Mrs. Martha A. Corbin, or any one of the Corbins, except John Corbin himself. I don't say he, Mulligan, was in possession any further than as owner and as lessor to Corbin. I also recollect that Thomas B. Monroe stated in his deposition that the price he obtained from Mulligan for the house and lot in controversy was a good price for that time, and was more than he could
78 get from any other person at that time.

JOHN McCOY.

Joseph H. Harrison's deposition.

Also, the deposition of Joseph H. Harrison taken at the same time.

I was a subscribing witness to a contract in writing, in which John Corbin leased from Dennis Mulligan the property in Lexington, Ky., in which Corbin now lives. The date of the same I do not recollet. Shortly after Mulligan purchased the property of Monroe. Mulligan wanted possession of the property, and, I think, got out a writ of forcible, and entry and detainer. Mulligan then argeed to let Corbin have the use of the house for a certain time free of rent, provided Mulligan had the use of an alley running between Corbin and Mulligan, and back to Mulligan's stable. I do not know anything of the contents of the writing.

The above property is the same as that now in controversy in this suit.

J. H. HARRISON.

79 *R. A. Buckner's deposition.*

Also, the deposition of R. A. Buckner taken at the same time.

The papers in this suit of Mulligan *vs.* Cobin, &c., have been lost so far as I know.

I remember that there was among the lost papers a deposition of Thomas B. Monroe, jr.

I recollect that he proved a contract between him and the auditor, by which Monroe was to have an interest in the lot in controversy.

He also stated that the same was approved by the governor before the Corbin act was passed.

He may have stated that the contract was made with the governor, and approved by the auditor.

My recollection is not clear which way he stated it, but it was in one of the two ways above stated.

I do not recollect everything in the contract.

Monroe also stated that he reported the sale back, as made to Mulligan, and that it was approved by Grant Green, secretary of state, before the governor had approved the law relinquishing to Corbin the interests of the State in the lot in controversy.

80 There was filed, among the lost papers, a written contract between Monroe and Mulligan for the sale of said lot, and it was in the handwriting of Thomas B. Monroe, jr.

RICH'D A. BUCKNER.

Deposition of D. J. Merrill.

Also, the deposition of D. J. Merrill, taken on the 7th day of June, 1866.

Answer. I know John Corbin and wife and family. I know the lot of ground now in controversy, (adjoining Dennis Mulligan,) and where John Corbin now lives; I have known said lot of ground a good many years. I recollect when a man named John Stevens lived there; as well as I recollect, he lived there between sixteen and eighteen years ago, and he lived there from three to five years. While John Stevens was in possession he said that it belonged to him, but I do not know how he got it. I do not know whether he made any repairs there or not.

I knew, and now know, Hartwell Ethrington. He was always said to be a brother of Mrs. Corbin's. I know no other Hartwell Ethrington about here, or at any place else.

81 Cross-examined by Corbin's:

I was married about 19 years ago, and Stevens was living at said house then, I think, and he remained there some two, three, four, or five years afterwards; the precise time I am not able to state. I do not know where Stevens went from this house, and I do not know who occupied it after Stevens left. I do not remember that a man namd Webster went there after Stevenr left. I went to the country shortly after this, and remained there some four or five years, and I do not know who occupied the place during this time. At the time Stevens lived there I owned and lived in the property on the corner of Upper street and the first street or alley at right angles with it, on the east side of the poor-house pond, in Lexington, Ky.

When I went to the country I rented this place out to a wagoner named John Watts, who afterwards lived at Athens, in this county, and Watts moved to the same, and lived there. I recollect that after Stevens left the house in controversy in this suit, some black people lived there, but I do not know who they were; I don't

82 think that I knew Mr. Corbin until he moved to this house in controversy. He moved there and stayed a while, and then moved away, and after being gone awhile moved back to said house in controversy. I have no idea how long he had been living at this house before he moved away, going to the country, as I understood. I recollect the fact that he was crippled up by the falling of a house in which he was at the time, on Cheapside, in Lexington, and I recol-

lect that it was after he so got hurt that he moved away from said house to the country. I do not recollect that Corbin was living at said house during the last cholera; I cannot say whether he was or not.

It will be 19 years next December since I was married. I do not recollect how long it was after Mrs. Mitchell bought this house before Corbin got possession of it. I recollect no one else who lived at this house at any time after Stevens' left, and up to the time that Corbin moved there the first time, except the negroes I have mentioned. The first that I ever knew of the house, some negroes lived there who said that they belonged to Wm. T. Barry's estate.

83 This was before the first cholera. I have a pretty good recollection of the time at which Mr. Corbin came back so the house after going to the country. I think that this was about eight years ago, and may be nine. Stevens merely said that he had bought the property, but he did not state how, or anything further about it.

Re-examined by plaintiff:

I know of no one buying said house myself, and know nothing personally about Mr. Mitchell's buying it.

D. J. MERRILL.

Deposition of W. James Harrison.

Also, the deposition of W. James Harrison, taken at the same time and place.

Answer. I know Mr. Corbin and his folk, and I know the house and lot in controversy. I know when John Stevens lived there; I cannot fix a time when Stevens occupied it. It may have been 20 years ago, or it may be longer. I know that he was there when he watched a patch of watermellons for Mr. Foreman. I cannot state whether he remained there one, two, or three years, or longer.

84 I do not know where Stevens went to when he left there.

Whether Stevens owned the property or not I do not know. All I know is, that when the boys were in Higgins' lot kicking foot foot-ball, and sometimes encroached on the property where he was living, he would run us off, and say that he did not want us to come on his property.

his
W. JAMES + HARRISON.
mark.

Deposition of James Hill.

Also, the deposition of James Hill, taken at the same time and place:

Answer. I knew, and now know, the property in controversy in this suit. All I know about John Stevens occupying it was, that I went there once to rent it, having understood that it was for rent. Stevens and his wife were then living there. Stevens then told me

that he would let me know in a day or two whether he would sell it or rent it. This, as well as I recollect, was between 17 and 19 years ago. The only thing by which I can fix the time in my mind is the fact that I was living in the house across from the corner on the next street from the house in controversy; this house where
85 I was living having been rented by John Stillfield from John Norton, I rented the house from Stillfield, and his time ran out and I had to move. I then rented a house from John McCauley, and moved out to the country. I don't know when Stevens left there, or anything further about him. I know nothing about any claim he had to the property in controversy, except from his say so. I did not go to see Stevens any more in regard to it, having rented the place from McCauley.

Cross-examined by Corbin's:

Answer. John Stevens was the man who had lost a hand. I cannot tell what year it was I rented the property from McCauley; neither do I remember the year I rented from Stillfield. I stayed at Stillfield's house until his time was out, which was some eight or nine months. I heard about Corbin getting injured by the fall of the house on Cheapside; this accident occurred after I moved to the country. I have no special date which enables me to say how long it has been since I called on Stevens to rent the house in controversy, and I only have a general recollection as to the time.
86 The above time is given to the best of my opinion. I never knew who lived in the house in controversy after the time I saw Stevens in regard to renting it. When the cholera was here the last time, I was living in James Hamilton's house, next to Mrs. Buzzard's. Since leaving McCauley's in the country, I had lived at Dawling's house three or four months, then at Kirkpatrick's awhile, say over six or seven months, then at Drake's over a year, and I then went to Hamilton's house, mentioned above. I cannot state with much accuracy the time I lived at the different houses; I have only a general recollection on the subject. I lived at McCauley's place well on to three years. I do not remember that the last cholera was here in 1849. I do not know how many years it has been since the last cholera was here. I should think that it was 14 or 15 years ago. I am, however, not certain as to this; I keep no dates, and am no scholar. From what little acquaintance I had with John Stevens, I can only state that he worked about for a living; he broke rock, and dug cisterns, and did such work as this. I had no acquaint-
87 ance with his family, and cannot state their circumstances.

his
JAMES + HILL,
mark.

Defendaant's depositions.

The deposition of John Myers, taken on the 7th day of February, 1866.

John Myers' deposition:

By defendants: I know the house and lot in controversy, now occupied by defendants; knew it long before they occupied it. When

'I first knew the house, Peter Barry, a negro man, lived in it. He occupied it about two and one-half years before he died. His death took place in 1833, during the cholera, which disease killed him; said Barry made a coffin for Lewis Sayre the day before he himself died. He belonged to William T. Barry, who, as I believe, was then dead, as said Barry's son took possession of said Peters' property after his death. He also got me to do some work on that place, repairing the house and fence. I am the same John Myers whose deposition is in the papers of the Com'th *vs.* Corbin, on file in this case.

his
JOHN × MYERS,
mark.

88 Plaintiff, Denies Mulligan, excepts to the within deposition of John Myers as incompetent, and wholly inapplicable as evidence in this suit.

McCOY & HUSTON, *P. Q.*

By def: After Peter Barry's death, a colored man named Wells occupied the said premises. He rented from young Mr. Barry, heretofore referred to, and said Wells continued there until I left the neighborhood.

his
JOHN × MYERS,
mark.

Deposition of E. Brennan.

Also, the deposition of E. Brennan, taken at the same time and place.

By def't: Am clerk of the Fayette county court; as such I have the custody of the bonds given by the agents of the commonwealth for escheated property. I have examined the records, bonds, and order book of the office since 1854, with the purpose of ascertaining whether or not Tho's B. Monroe, jr., had given any such bond, but can find no such bond, nor is there any record upon the order books of such bond having been taken. I have been clerk of said
89 court since 1863, and have no knowledge in regard to these matters, except as is shown by my records. It is possible but not probable such bond might have been given without my having any knowledge of it, but the records ought to show if any such was executed. It is barely possible that such bond might have been lost in the office, but in this case there is no minute of it upon the order book; it is barely possible that the clerk failed to enter the order. Papers have been misplaced in my office, but no important ones, but no paper of importance there has been lost that I know of.

By def't: I was chief deputy of the office from the fall or winter of 1858, up to the time I became the clerk. The bonds are kept carefully; they are only produced when called for, and then we are careful to return the bond to its proper place. I knew Joseph Fieklin, adm'r of Wm. T. Barry, dec'd, and know that said Fieklin is dead;

Mary Thwaits and James March are also dead. I also knew Mrs. Hickey, the widow of Wm. T. Barry, dec'd, and know that she was alive quite recently.

And further saith not.

ERNEST BRANNON.

90 *Deposition of Wickliffe, C. H.*

Also, the deposition of Charles H. Wickliffe, taken on the 1st day of February, 1866.

Question 1st. State how long you have known John Corbin and his family, and how long it is since they took possession of the house and lot in Lex., where they now reside, next to Dennis Mulligan's residence. State your means of information.

Answer. I have known John Corbin and family some twenty-four or five years. I do not recollect distinctly how long since they took possession of the house and lot referred to in the question. In the year 1843 I occupied a house on Upper street, in Lexington, Kentucky, nearly opposite to the one mentioned in the question. I saw Corbin at work on said house referred to in the question; he appeared to be making some repairs on the house.

About said time I was a great deal from home, being an agent of the Post Office department. I know nothing of the ownership of said property. I merely saw Corbin at work on the house, as I have stated above, in the fall or 1843 or 1844. At the time I saw
91 Corbin working on the house, he (Corbin) informed me that the said property had been purchased for him or his wife, and the same being much out of repair, he was repairing it. It seems to be that Corbin then rented it to a man named Stephens, but I am not certain; I have no recollection when Corbin having into it himself. To the best of my knowledge, Corbin has been living in said house some ten, twelve, or thirteen years. I know that he has been living there for a number of years, but I cannot state exactly how long.

Cross-examined by plaintiff:

I think that Mr. Corbin lived in the country, and then moved to town, but I cannot state how long it has been since he came to town; neither can I state exactly how long he has been in said house; my statement as to the time is a mere supposition. I do not know of my own knowledge that he rented the house to any one. I only know as to this, what he told me.

CHA'S H. WICKLIFFE.

Plaintiff, Dennis Mulligan, excepts to the within deposition
92 of Charles H. Wickliffe, as wholly incompetent and inapplicable as testimony in this case.

McCOY & HUSTON, *P. Q.*

Deposition of Miss Mary E. Corbin.

Also, the deposition of Miss Mary E. Corbin, taken at same time and place.

State all you know concerning the occupation of the house adjoining Dennis Mulligan's, which is at present occupied by defendants, John Corbin and family, who claimed it, and now claims it, and all you know concerning it, and state your relationship to the parties, defendants.

Answer. I am a daughter of the defendant, John Corbin. The first I recollect of living at the house referred to in the question, and which is now occupied by my father and his family, was in 1848. In 1849, my mother rented it to Dr. Ayres. She so kept it rented to Dr. Ayres until we returned, which was eight years ago next July. I recollect that we were moving in on the day that Barker was hung. It was willed to my mother, and after her death to my sister. My mother then claimed and now claims it as hers. I do not remember when we moved to the house; I mean to state that the first recollection I have about it was, that we were living there in 1848. I was too young to recollect anything about it before that time.

93

Cross-examined by plaintiff:

Dr. Ayres' negroes occupied it all the time while we were gone. The name of one of them was Jane or Jane Ayres. My recollection is that she was the one he put in it first, and that she occupied it all the time. I will be 24 years of age on the 10th day of next July.

MOLLIE E. CORBIN.

Plaintiff, Denies Mulligan, excepts to the within deposition of Miss Mary E. Corbin, as wholly incompetent and inapplicable in this case.

McCOY & HUSTON, *P. Q.*

Deposition of Hartwell Ethrington,

Also, the deposition of Hartwell Ethrington, taken at the same time.

Answer. I am a brother of Mrs. Corbin. I know the property on Upper street, in Lexington, where they, (def't & family,) now live. They moved in and upon it when I was a boy from ten to fifteen years of age; I am now 36 years of age. The above is as near as I can recollect; I have nothing by which I can fix the time definitely. I was living with my grandmother at the time, who bought the said house and lot and gave it to my sister, Mrs. Corbin. The latter has occupied it by herself and her tenants from the time she and family moved into it, when I was a boy, to this time.

94

Cross-examined by plaintiff:

I am not all certain about the time, at which they, (def'ts,) first moved to the house. I recollect of being there when I was a small boy. I recollect that there was an old woman living in the house

when my grandmother bought and gave it to my sister. This old woman had raised some vegetables in the garden, and wanted pay for the same. I, at this time, went there with my sister, and old Fannie got very mad because my sister was looking around the garden. She cussed and piched up a rock, and I becoming frightened, pulled my sister by the dress and asked her to come away.

his
HARTWELL × ETHRINGTON.
mark

95 *Deposition of Ann Spring.*

Also, the deposition of Ann Spring, taken on the 2nd day August, 1866.

1. Question by defendant. Are you acquainted with the defendants, John Corbin & wife, and how long have you known them. Do you remember the time when they first took possession of the house and lot in controversy in this suit. How long ago was it? Who was living in it at the time?

Answer. I have known the defendants, John Corbin and wife, for thirty years or more; I do not recollect exactly the time when they took possession of the house and lot in controversy in this suit, but it has been between twenty-three and twenty-four years ago, or well on to that. I cannot recollect certainly who was living in it at the time, but I rather think there were colored people then living in it.

2nd. By same. Did you know John Stevens, who once occupied this house? How long ago is it since he lived there?

Answer. I knew John Stevens mentioned above, well. I do not know exactly how long it has been since he lived at the house in question, but I think that he was living there when my brother was married, which was about twenty-three years ago.

96 3rd. By same. How long did he live there?

Answer. I cannot say.

4th. By same. Did Stephens claim to own the property, or did he occupy it as a renter?

Answer. He never was able to own anything that ever I knew of; he was always a renter ever since I knew him.

5. By same. What did he do for a living? Was he very poor or not?

Answer. He did any kind of work he could get to do; digging cisterns, cleaning out wells, and anything he could get to do. He was as poor as he could be.

6th. By same. Was he or not a reliable man, or was he a gassy, talking fellow?

Answer. He was a great gasser.

7th. By same. Were you living near the property when he occupied it, and when Mrs. Corbin first got it?

Answer. Yes sir, we lived the second house from it.

8. By same. What kin are you to Mrs. Corbin?

Answer. We are no blood kin. Her grandmother was my mother's step-mother.

9. By same. Did or not her grandmother buy the property
97 in question, for the purpose of giving it to her?

Answer. I do not know of my own knowledge.

10. By same. Did Mr. & Mrs. Corbin occupy the property immediately after it was given to her, or did they rent it out for a time; and if the latter, who rented it from them during that time?

Answer. They rented it out after it was given to her. I do not recollect all who rented it. Stephens lived in it at the time, and I recollect also that a colored woman named January lived in it.

11th. By same. In what condition was the property when Mrs. Corbin first got it; and what expense and trouble did she and her husband go to in putting it in repair?

Answer. It looked like it was ready to fall down. It had no fence or pavement, or nothing around it. It looked like an old shed. The fence was put up, and the pavement made after the time it was given to Mrs. Corbin; I suppose they did it.

Question by plaintiff. State by what means you recollect that the time the Corbins took possession of the property in
98 controversy, was between twenty-three and twenty-four years ago, as you have stated you do not recollect exactly the time they took possession of the same.

Answer. I cannot say exactly why I know, except that I was living there by them, and they were renting the house out at that time; I cannot recollect exactly the time.

Question. Then are not you merely guessing at the length of time, and really have no recollection of it?

Answer. I have no recollection of exactly the time; I recollect of their renting the house; I cannot tell how long they have had possession of it?

Question. Then how can you undertake to say it was from twenty-two to twenty-four years they have had possession of the property.

Answer. I said from twenty-three to twenty-four or well on to that. My brother Hiram has been married agoing on twenty-three years, and we were living within two doors of the house in controversy, at that time.

Question. Did Mr. Stephens live in the house in controversy at the time you state your brother Hiram was married.

99 Answer. I cannot say certainly, I think did; that the Corbins rented the house and lot spoken of, out, or do you know it by hearsay?

Answer. I know that they were the landlord and landlady, and that the people went to them to rent it; I never saw them receive any money for it.

Question. Did you ever see any or all them persons, who lived in that house, go to them to rent it; and if any, which, or who of them?

Answer. I did not see them go to them; but they were the landlord and landlady who attended to the place.

Question. Then you only suppose the persons occupying the property spoken of, rented it from the Corbins, because, as you say, they

the Corbins, were landlords and landladys is that your supposition?

Answer. I never saw them go to them to rent it, and never saw them receive any rent; but made my statement from the facts that they were landlord and landlady, and attended to the place; I supposed they went to them to rent it because they were landlord and landlady.

100 Question. Do you recollect the last cholera, or, as it is caled, the second cholera? and who occupied the premises spoken of at that time?

Answer. I recollect it; Mrs. Corbin occupied it at time.

Question. Did Mrs. and Mr. Corbin live in Lexington or in the country at that time?

Answer. They lived in that house.

Question. Did they live in that house ever since, or did they live in the country?

Answer. They have lived in the country a part of the time since then.

ANN $\underset{\text{mark}}{\overset{\text{her}}{+}}$ SPRING.

Deposition of James M. Lawrence.

Also, the deposition of James M. Lawrence, taken at the same place, Aug. 2nd, 1866.

1. Question by defendant. Are you the step-grandson of Mrs. Ann Mitchell who bought the house and lot in controversy?

Answer. Yes, sir.

2. By the same. Did she or not buy it from Thwaits, very soon after he and March bought it; and for whom did she buy it?

101 Answer. She did buy it from Thwaits very soon after he and March bought it; and she told me a few days after she bought it, that she had bought it for Martha; that is, for the defendant, Mrs. Corbin.

(This answer is excepted to by pl'ff.)

3. By same. Was John Stephens occupying the property at the time Mrs. Mitchell bought it, or did go in afterwards?

Answer. I think he was living there at that time.

4. By same. How long in all did he occupy it?

Answer. I was perhaps a year or 18 months; I cannot give the time with accuracy.

5. By same. Did Mrs. Corbin occupy the property when her grandmother first gave it to her, or did she rent it out?

Answer. My recollection is, that she rented it out.

6. By same. Was or was not Stephens living in it when it was first given to her?

Answer. Yes, sir; I think he was.

7. By same. Did he claim to be the owner of the property or a renter.

Answer. He claimed to be a renter.

8. By same. How do you know this?

102 Answer. He lived but a door or two from us, and was at our house every day, and I was very intimate with him, and he told me who he rented the property from.

9. By same. Was he poor or not? Was he able to own the property? What did he do for a living?

Answer. He was a very poor man, and worked every day for what he eat and wore; he worked on the street, dug cisterns, and cleaned out wells. I do not think that he was ever able to own such a piece of property.

10. By same. How many years is it since Mrs. Corbin got him out of the property?

Answer. I do not recollect exactly, but it was in 1844 or 1845; perhaps in 1845.

11. By same. Was Stephens a reliable man, or was he gassy, boastful, and untruthful?

Answer. He was a pretty gassy kind of man. I do not know that he would lie, but he was a pretty smart talker.

Question by plaintiff. How do you know Mrs. Mitchell bought the property in controversy?

103 Answer. She told me that she bought the property for her granddaughter and gave it to her. This is the only way in which I know it.

(This answer is excepted to by plaintiff. The statement of Mrs. Mitchell as given by the witness are objected to as hearsay and not competent.)

Question. How do you know that Mrs. Corbin rented out the property in controversy?

Answer. I only know it from the parties living there, and from Mrs. Mitchell, and from Mr. Corbin and his wife; I did not see them get the rent.

(This answer is excepted to by pl'ff as hearsay evidence and incompetent.)

Question By and from what parties besides Corbin and Mrs. Corbin, and Mrs. Michell, did you understand that the Corbins rented the property out? Name the parties, and who they were.

Answer. John Stephens and his wife, who lived there, and Mrs. Bryant told me so. I think, but am not certain, that Miss Kitty Hawkins also told me so.

(This answer is accepted to as hearsay.)

J. M. LAWRENCE.

Deposition of Samuel Devore.

Also, the deposition of Samuel Devore, taken at the same time and place.

104 1. Question by defendants. Do you know the house and lot in controversy in this suit? and state how long it has been since Corbin and wife first got possession of it.

Answer. I know the house in controversy in this suit. Def'ts, Corbin and wife, got possession of it in 1844. I recollect that they in

that year got logs from Mr. Castleman out of a woods near our house to fix it up.

2. By same. Did they occupy it themselves at first, or did they rent it out for a time after it was given to Mrs. Corbin?

Answer. They rented it out until the fall of 1846, and then occupied it themselves.

3. By same. What enables you to fix that date?

Answer. Because Nannie Corbin and my brother Robert's son were both in that year, 1846, born in the house in controversy.

4. By same. Where was John Corbin living when he was crippled by a wall falling on him, and in what year did this happen?

105 Answer. He was living in the house which he now occupies; it happened on the Saturday preceding the August election in the year 1848.

5. By same. Did you know John Stephens when he occupied this property?

Answer. No, sir.

Question by plaintiff. Do you know of your own knowledge that Corbin and wife got possession of the house in controversy in 1844, or do you know it by hearsay by Corbin when he cut the logs you spoke of.

Answer. I know it from his cutting the logs and from Mrs. Mitchell telling me that she had given the house to Mrs. Corbin; I saw them hauling the logs, but did not see them haul them to the house; but I saw the logs at the house and saw Corbin fixing it with the logs, and I know that they rented out the house to Bob Bell in 1845.

(The statements derived from Mrs. Mitchell are excepted to.)

Question. How do you know that Corbin and wife rented the house to Bob Bell? Do you know it of your own knowledge or from hearsay?

106 Answer. Bob Bell himself told me so, and so did Mrs. Corbin. Bob Bell is a man of color, and the statement was made to me before the passage of the civil right's bill.

(This is excepted to by pl'ffs as hearsay, and on account of its being statements derived from a negro.)

(It is also excepted to because it was derived from statements made by Mrs. Corbin.)

SAMUEL DEVORE.

Deposition of Robert H. Devore.

Also, the deposition of Robert H. Devore, taken at same time and place.

1. Question by defendants. At what time did the defendants, Corbin and wife, get possession of the house and lot in controversy in this suit under the gift from Mrs. Mitchell?

Answer. In 1844, I think, sir.

2. By same. Who was occupying it at that time; and did he hold it under claim of ownership, or as a renter?

Answer. John Stephens, a man who afterwards lost his hand, occupied it at that time as a renter. He never was able to own anything.

107 3. By same. Do you know whether or not Mrs. Corbin had to pay or allow him something for his garden to get him to leave the place, and how much did he get for it?

Answer. I know that Mr. Corbin had to pay him for his garden to get him to give up the house. John Stillfield and Dan'l Tolls valued it at $1 50, and Mr. Corbin paid him this and 50 cts. extra to get him to leave.

4. By same. Was he or not very poor? How did he make his living?

Answer. He was quite a poor man. He worked on the streets and other places in town and cut cord wood for his living.

5. By same. Was he a reliable man, or was he gassy, boastful, and trifling?

Answer. He was a gassy, boastful, and trifling man, and no reliance could be attached to him.

6. By same. After Mrs. Corbin got the property, did she occupy it herself at first, or rent it out?

Answer. She rented it out until September, 1846, at which time she, her family, and myself moved there from the house in Lex., where Mrs. Mitchell resided up to her death, which occurred
108 in the August next previous.

7. By same. What enables you to fix this date of the fall of 1846?

Answer. My son was born in the house in controvery, in December, 1846, and Nannie Corbin, daughter of def't, Mrs. Corbin, was born in same in November of the same year.

8. By same. Where was Corbin living when he was crippled by the fall of a wall upon him, and when did this happen?

Answer. In the house in controversy, and it happened on Saturday next preceding the August election in 1848.

9. By same. Was he still living in the same property during the cholera of 1849?

Answer. Yes, sir.

Question by plaintiff. What relation are you to Corbin and wife, and what relation is Mr. Samuel Devore, who testified in the next deposition before the one in this case?

Answer. I am a brother-in-law to Mrs. Corbin; Samuel Devore is no relation of hers.

Question. Is Mr. Samuel Devore your brother?

Answer. He is.

109 Question. Do you of your own knowledge that Stephens occupied the property in controversy as a renter, or do you know it by hear say?

Answer. I know it by my own knowledge.

1. Re-examined. Did Stephens set up any claim at all of owning the property, or did he only claim to be allowed the value of his garden as an inducement to leave before he had used his vegetables?

Answer. He set up no claim of ownership to the property, but only claimed pay for the vegetables he had raised.

R. H. DEVORE.

Deposition of George A. Bowyer.

Also, the deposition of George A. Bowyer, taken on the 3d day of August, 1866, at the same place.

1. Question by defendant. Do you know the house in controversy in this suit, now occupied by the defendants? How far back do you remember its occupants of it, and who occupied it at that time?

Answer. I do know the house referred to in the question. I moved to the house I now occupy, which is the second house from the one in controversy, on the 1st day of July, 1847. I commenced
110 building my house in 1846, and Corbin worked some on it for me. I know that he was living in the house in controversy when I went to my house to live, and my impression is that he was living in the house in controversy when he was working on my house in 1846. I recollect that in the next year after I moved to my house, Corbin was badly mashed up by the falling of a house on Cheapside, and he was then living at the house in controversy.

Question by plaintiff. You say your impression is that Corbin occupied the property in controversy in 1846. State how you obtained that impression.

Answer. From the fact that I was building up there in 1846, and afterwards moved there in 1847, and then found him living there, and not knowing that he lived anywhere else.

Question. Then that impression is only an inference of your own; is it not? and you had no real knowledge of the fact of occupying by any other means; had you?

Answer. What I have stated is the only knowledge I have of it.

Question. How long after you bought your property on
111 which you now reside, was it before you began to build on it?

Answer. I bought it in 1845, and that year commenced the cellar, and the next year I proceeded with the building and finished it in 1847. The deed was made to me in 1846, at which time I made the last payment.

G. A. BOWYER.

Deposition of Cynthia McCarty.

Also, the deposition of Cynthia McCarty, at the same time, at her residence on Short street, Lexington.

1. Question by defendants. What connection are you to John Stephens, who formerly occupied the house and lot where the defendants, Corbin, and wife now live?

Answer. He married my daughter.

2. By same. Did he own or claim to own that property, or was he a renter of it?

Answer. He was a renter, and claimed it no further than as any common renter.

3d. By same. Whom did he rent it from?

Answer. To be positive I cannot, but it was the old gentle-
112 man, who lived on this street or Main street. I would know

his name if I heard it called. He has been dead, I think, some time.

4th. By same. Was the name Ficklin?

Answer. That is the same.

5. By same. Who told you that Stephens rented that property from Ficklin?

Answer. I think Stephens said so himself. That is the best of my recollection.

6. By same. Was or not Stephens ever able to buy this or any other property?

Answer. No, sir. Never.

7. By same. Was he or not very poor, and his family often in actual want?

Answer. It is just so, the truth must come.

8. By same. How long is it since he left this property, and where did he then go to live?

Answer. I think it has been 22 or 23 years, and he then came to live with me at Mr. Mat. Johnson's garden. I am not certain whether it was in Higgin's or Johnson's time. It was the place where Mr. Mat. Johnson now lives; he got the place from Higgins, and
113 my husband also rented it from Higgins. We lived there 3 years and 4 months.

9. By same. Was or not Stephens a very gassy, boastful man?

Answer. He was; everybody knows that.

Question by plaintiff. Are you any relation of Mr. or Mrs. Corbin?

Answer. None in the world.

Question. Are you certain in your recollection that Stephens told you he rented the property in controvesy, or is it only an impression of yours?

Answer. Oh, no; it is no impression. I am certain that in his conversation with me that he told me who he rented from.

Question. Did you live at the Mat. Johnson's place after he bought it from Higgin's; and if so, how long?

Answer. I did. I recollect that when Johnson got it, my potatoes and corn were up very prettily, and as well as I recollect, I remained there after that until August come a year, but am quite uncertain as to this.

Question. Did Stephens come to live with you before or after
114 Mat. Johnson bought the place.

Answer. I cannot answer this for certain.

You have stated that it is 22 or 23 years since Stephens left the property in controversy; might it not be less than that time by 2 or 3 years?

Answer. I think not.

her
CYNTHIA × McCARTY.
mark.

Plaintiff excepts to depositions.

The plaintiff excepts to the above depositions of Spring, Lawrence, of the two Devores, Bowyer, & McCarty as incompetent and irrelevant, and notes the exceptions in the body of the depositions.

Filed Aug't 15th, 1866.

McCOY & HUSTON.

The following is the substituted and amended petition in equity, filed herein February 23d, 1865, and should have been copied on page 2, of this record before the amendment to it, to wit:

Substituted and amended petition in equity.

The plaintiff, Dennis Mulligan comes and files his petition, and for petition says, that he is the owner, and entitled to
115 the possession of a house and lot or (tract of land) in the city of Lexington, Fayette county, Kentucky, containing 54 feet front, and 140 feet back, and bounded as follows: Beginning on Upper street, at the corner of Michael Clark's lot; thence with said Upper street N. E. 50 feet; thence S. E. 140 feet, or to within 6 feet of Bodley & Co.'s factory; thence S. W. 50 feet to Michael Clark's lot, and with his line N. W. to the beginning, containing fifty-four feet front, and 140 feet back, or 840 square yards, and adjoining the present residence of said Dennis Mulligan, and being the same house and lot recovered by the State of Kentucky as an escheat in the suit of the said commonwealth of Kentucky against Corbin, and conveyed by the commonwealth of Kentucky, by Grant Green, auditor, to Thomas B. Monroe, jr., and Dennis Mulligan, and by Thomas B. Monroe, jr., to Dennis Mulligan, by deeds duly recorded in the office of the Fayette county clerks; reference is here made to the said suit of the commonwealth
116 of Kentucky against Corbin, and the papers and records thereof now on record in clerk's office of the Fayette circuit court, together with decision of the court of appeals of Ky. therein, and mandate of said court of appeals, are made part hereof.

Plaintiff, Dennis Mulligan, states that the defendants, John Corbin, Martha Ann Corbin, his wife, and Martha A. Corbin, jr., now hold possession of said house and lot (or tract of land) without right, and for three years past have unlawfully kept the plaintiff out of possession.

Plaintiff further states that the original petition, together with all the papers or documents filed by him in this case, have been lost or carried away from the clerk's office by some one to him unknown. Amongst the documents so lost is the contract between the commonwealth of Ky. and Thomas B. Monroe, jr., as agent and attorney of said commonwealth, for the recovery of said house and lot as an escheat. Said contract was signed by Thomas S. Page, auditor of public accounts of the commonwealth of Ky.; Thomas B. Monroe, jr.; James Harlan, attorney general; and approved by C. S. More-
117 head, governor of the commonwealth of Ky., and bears date

the 1st day of November, 1855, and is recited in the deeds by Grant Green, auditor, to Thos. B. Monroe and Dennis Mulligan, now on record in the Fayette county office, and is a true copy thereof, and an office or official copy will be herewith filed. Said recited copy by Grant Green, auditor, and said office copies are referred to and made part hereof. Also, the contract between the said commonwealth of Ky., by Thos. B. Monroe, as att'y and agent of said commonwealth, and Dennis Mulligan, for the sale of the said house and lot to said plaintiff, Dennis Mulligan, which contract bears date November 25th, 1858, and is signed by Thomas B. Monroe, jr., attorney for the commonwealth of Ky., now on record in the Fayette county clerk's office, a copy of which, duly certified, is herewith filed and made part hereof. Also, the receipt of Thomas B. Monroe, jr., as attorney and agent of the commonwealth of Kentucky, for two payments, amounting to three hundred dollars, made by plaintiff, Dennis Mulligan, on the account of said house and lot. Said
118 receipt bears date December 4th, 1860, and is on record in the Fayette county clerk's office, and is signed by Thomas B. Monroe, jr., as agent and attorney of the commonwealth of Ky., a certified copy of which is herewith filed and made part hereof. Also, the recital of a deposit of one hundred and thirty-one dollars with Agricultural Deposit Bank, at Lexington, to the credit of Grant Green, auditor, at Frankfort, Ky., bearing date April the 17th, 1861, and signed by D. Mulligan; also, of record in the Fayette county clerk's office, a certified copy of which is herewith filed and made part hereof. Also, the report of the recovery of said house and lot as an escheat to the commonwealth of Ky., and of the sale of said house and lot by the commonwealth of Ky., by and through its agent and attorney, Thomas B. Monroe, jr., to plaintiff, Dennis Mulligan, for the sum of $400, to Grant Green, auditor of public accounts, bearing date April 4th, 1861, now on record in the Fayette county clerk's office, a certified copy of which is herewith filed and made part hereof. Also, the approval of said report of
119 recovery and sale by Grant Green, auditor of public accounts, bearing date April the 4th, 1861, and is signed by Grant Green, auditor of public accounts, now on record in the Fayette county clerk's office, a certified copy of which is herewith filed and referred to and made part hereof. Also, the deed of the commonwealth of Kentucky, by Grant Green, auditor, acknowledging the payment of the commonwealth's portion of the price of said house and lot into the treasury of the State of Kentucky by plaintiff, Dennis Mulligan, and conveying said house and lot to said Thomas B. Monroe, jr., and Dennis Mulligan, bearing date the 17th day of April, 1861, and signed by Grant Green, auditor, now on record in the Fayette county clerk's office, a certified copy of which deed is herewith filed and referred to and made part hereof. Also, the deed of Thomas B. Monroe, jr., and wife, conveying the interest of said Thomas B. Monroe, jr., and wife, in and to said house and lot to Dennis Mulligan, which deed bears date the 25th day of April, 1851, is signed by Thomas B. Monroe, jr., and Elizabeth

120 Monroe, and is now on record in the Fayette county clerk's office, and is here referred to and made part hereof, and a certified copy herewith filed. Also, the deposition of Thomas B. Monroe, jr., esq'r., late secretary of state of Kentucky. Also, the deposition of Grant Green, esq'r., late auditor of public accounts of Kentucky. Also, an office copy of the act of the legislature attempting to convey the said house and lot to Martha A. Corbin, jr.

Plaintiff says that the report of the sale of the said house and lot aforesaid made by Thomas B. Monroe, jr., to Grant Green, auditor, was approved by Grant Green, auditor, before the act of the legislature attempting to donate or convey the said house and lot to Martha Ann Corbin, jr., was approved by the governor of the commonwealth of Ky.

Plaintiff further states, that said act of the legislature did not go into effect or force from its passage, but went into force or effect under the general provision in regard to statutes in sixty days from its approval by the governor of Ky.

121 Plaintiff further states that the deed of the commonwealth of Ky., by Grant Green, auditor, to Thomas B. Monroe, jr., and Dennis Mulligan, and the deed of Thomas B. Monroe, jr., and wife, to Dennis Mulligan, of said house and lot, were all completed before the said act of the legislature could or did go into effect. Plaintiff states that said defendant, Corbin, occupied the said house and lot as lessee under him, the plaintiff, both before and at the time of the passage of the said act of the legislature attempting to donate said house and lot to the said Martha Ann Corbin, jr.; that the lease of the plaintiff to defendant, Corbin, was in writing, and was filed by plaintiff among the papers in this case, and was lost with the other papers in the case.

Wherefore, plaintiff prays judgment for the recovery of the said house and lot (or tract of land,) and $150 dollars damages for being kept out of possession, and for other proper relief; he also prays his costs herein.

JOHN McCOY, *P. Q.*

122 Plaintiff makes affidavit and says, that the facts stated in the above petition he believes to be true.

DENNIS MULLIGAN.

Clerk's certificate.

STATE OF KENTUCKY, *Fayette circuit court, sct:*

I, John B. Norton, clerk of the court for the circuit aforesaid, do certify that the foregoing one hundred pages and upwards, contain a full, true, and complete transcript of the record and proceedings had in the case mentioned in the caption hereof, now on file in my office.

Given under my hand this 1st day of October, 1866.

JOHN B. NORTON, *C. F. C. C.*

123 And afterwards, at a court, held as aforesaid on the twelfth day of December, 1866, the following order was made:

Submission.

This cause came on and was heard, but the court not being fully advised, took time.

And afterwards, to wit, at a court, held as aforesaid on the 18 day of February, 1867.

Judgment.

The court being sufficiently advised, it seems to them that the judgment herein is erroneous. It is, therefore, considered that said judgment be reversed and cause remanded, with directions to dismiss the action and adjudge to the appellants their costs, which is ordered to be certified to said court.

The following is a copy of the opinion delivered in this cause on the 18 February, 1867:

124 STATE OF KENTUCKY:

Court of appeals, February 18th, 1867.

JOHN CORBIN, &c., appellants,
vs.
DENNIS MULLIGAN, appellee. } Appeal from Fayette circuit court.

The court being sufficiently advised, delivered the following opinion, to wit:

This appeal brings for revision before this court a judgment in favor of the appellee against the appellants, John Corbin, and Martha A. Corbin, his wife, and their daughter, Martha Ann Corbin, jr., for the recovery of a house and lot in the city of Lexington, claimed by the appellee by virtue of a deed from Grant Green, as auditor of public accounts, to him and Thomas B. Monroe, dated the 17th day of April, 1861, and of a deed from Monroe and wife to appellee, dated the 25th day of April, 1861.

It appears from the record, that prior to the year 1833, the lot in controversy was owned and occupied by Solomon Brindly, a
125 free colored man, under a deed from Thomas Bodley, dated the 28th of December, 1808, but that a slave of the late Hon. Wm. T. Barry, named Peter, died in the occupancy of the property in 1833, and for over two years before his death had occupied it; and from this and other facts it seems that Barry claimed the property prior to 1833, but under what evidence of title, and whether before or after the death of Brindley, does not appear. It does appear, however, that Barry, and his personal representatives and heirs, by their tenants and agents, continued to claim and occupy the property till the 9th day of January, 1843, when it was sold by the sheriff of Fayette county, under the levy of an execution, in favor of the old

Bank of Kentucky against the administrators and heirs of W. T. Barry, and purchased by James Marsh for $151, and by an arrangement between the purchaser and Ann Mitchell, who paid the
126 purchase price, the sheriff, by his deed, dated the 15th day of August, 1846, conveyed the property to the appellant, Martha A. Corbin, sr., for life, and after her death the remainder to her daughter, the appellant, Martha A. Corbin, jr., "for and during her life, and if she has descendants, then remainder to them in fee simple, but with liberty to her to devise it to whom she pleases; but if she has no descendants living at her death, then remainder to Hartwell Ethering, in fee simple."

And under this conveyance the appellants occupied and claimed the property, when, on the first day of November, 1855, Thomas S. Page, as auditor of public accounts, and Thomas B. Monroe, an attorney-at-law, entered into a written contract, which was attested by the attorney general, and endorsed "approved" by the governor, whereby the auditor employed Monroe "to sue and recover
127 the said lot as having escheated to the commonwealth upon the death of Solomon Brindley, and (agreed that) all that may be recovered of said lot, the party of the second part shall be entitled to one equal moiety for his compensation for services rendered in the premises."

This contract contains the further extraordinary stipulation:

"And it is understood that Mrs. Hickey, widow of Wm. T. Barry, is to have dower, or the amount which would be due her in case the lot had belonged to said Barry."

Under this contract, Monroe instituted and prosecuted a suit in the Fayette circuit court, against said John Corbin and wife, but to which Martha Ann Corbin, jr., was not a party. The suit was brought in the name of the commonwealth by Thomas B. Baxter, her agent, appointed by the auditor to take possession of escheated estates, and resulted in a judgment of eviction, which was af-
128 firmed by this court, at its December term, 1859.

On the 25th day of November, 1858, and shortly after the judgment of eviction Monroe, as attorney for the commonwealth, appears to have contracted with the appellee, Mulligan, for the sale of the property for the sum of $400, one-half of which was to be paid on the execution of the "title bond," and "the balance in one year thereafter:" and Monroe further agreed, "as attorney aforesaid, to deliver possession of said property to said Mulligan, and execute or have executed the aforesaid bond within a reasonable time."

No further bond appears to have been given until the 4th day of Dec'r, 1860, when the following writing was executed by Monroe.

"Rec'd Dec'r 4th, 1860, of Dennis Mulligan one hundred dollars, in part payment for a house and lot sold by me to said Mulligan being the house and lot recovered by commonwealth of Kentucky
129 from John Corbin. Two hundred dollars have been heretofore paid by Mulligan to me leaving now due one hundred dollars, to complete the whole purchase money of $400, on the payment of

which balance, on the 18 April, 1861, or before, I am to execute to Mulligan a deed to said house and lot.

"THOS. B. MONROE, JR.,
"*Ag't & Att'y for Com'w'lth of Ky.*"

Although the appellants remained in possession, it appears that shortly after the date of Mulligan's contract with Monroe, an agreement was entered into between him and the appellant, John Corbin, whereby Mulligan "agreed to let Corbin have the use of the house for a certain time, free of rent, provided Mulligan had the use of an ally running between Corbin and Mulligan," &c.

The writing evidencing this agreement being lost its precise date is not shown, but, from the evidence, we infer it was before the judgment was affirmed in this court.

130 On the 4th day of April, 1861, the following act of the legislature was approved by the governor.

"Be it enacted by the general assembly of the commonwealth of Kentucky, that whatever interest in a small house and lot on Upper street, in the city of Lexington, which was conveyed in the year 1808, by Thomas Bodley to Solomon Brindley, may rightfully belong to the State by escheat, or otherwise, since the death of said Brindley without any known legal heirs be, and the same is hereby released to and vested in Martha Ann Corbin for her life, and her daughter Martha Ann absolutely after her said mother's death.

"The said property having been bought in the year 1843, as the property of Wm. T. Barry, claiming and possessed of it after said Brindley's death, and conveyed, in 1846, to the said mother and daughter, as aforesaid, and who have occupied as theirs ever since said sale and conveyance."

131 And on the same day the following statement appears to have been made and approved, and filed in the auditor's office.

"GRANT GREEN, ESQ., *Auditor*, DEAR SIR: As agent of the commonwealth of Kentucky, I have received possession of a certain house and lot in the city of Lexington mentioned and described in the petition in the Fayette circuit court of Com'lth *vs.* Corbin, and have as agent aforesaid, sold the same to Dennis Mulligan for the sum of $400, one-half cash, and balance payable in April, 1861, taking good security for the payment of the money.

April 4, 1861.

"T. B. MONROE, JR."

"I approve of the above contract, April 4. 1861.
"GRANT GREEN, *Auditor*."

From the testimony of Monroe, and from that alone, it appears that Green, as auditor, approved of his report before the governor approved the said act of the legislature, and he refers to the facts, that at the time he held the office of secretary of state, and

132 that it was one of the duties of his office to present the acts of the legislature to the governor for his approval, and while this explanation furnishes a sufficient reason why he knew the fact,

it strongly conduces to the further conclusion, that he purposely deferred an official duty to defeat the will of the legislature, by securing through the auditor a technical advantage to himself and Milligal.

And at the time he gave his testimony he had conveyed to Mulligan his claim to one moiety of the property, by a deed with general warranty; he was not a competent witness for Mulligan, but although his deposition was excepted to upon this ground, as it does not appear that the exception was afterwards insisted upon, it must be deemed to have been waived, and is not, therefore, an available objection in this court.

133 It is insisted, however, for the appellants, that the judgment is erroneous, and should be reversed on several grounds, amongst which are, first, that the sale by Monroe was void, because the law gave him no power to make it; and secondly, that, notwithstanding the employment of Monroe and his contract with Mulligan, the act of the legislature operated to vest the title of the State in the appellants.

1. The *the* employment of Monroe as an attorney-at-law, with an agreement to compensate him out of the property to be recovered, seems to us to have been authorized by an act providing for the employment of attorneys by the auditor, approved March 9, 1854. (1 Revised Statutes, 464.) But that act does not constitute the attorney, so specially employed, the agent of the State, with power
134 to sell escheated property, nor are we aware of any law conferring such power upon an attorney so appointed. Moreover, the contract between the auditor and Monroe does not even imply an attempt on the part of the auditor to confer such authority. The second article of chapter 34, Revised Statutes, 2 vol., 459, provides for the appointment, by the auditor, of agents for the commonwealth in each county, who, before entering on the duties of their office, are required to execute bonds, with security to be approved by the county courts of their respective counties, and these agents, when so appointed and qualified, may, under written directions of the auditor, sell property of the State, which may have come to their possession; but although the name of Baxter, as the agent for Fayette county, was used in the prosecution of the suit of the commonwealth to recover the property, he does not appear to have
135 acquired the possession, nor to have been a party to the sale to Mulligan, nor even to have sanctioned it in any manner.

We are of the opinion, therefore, that the transactions between Monroe and the appellee, were without authority of law so far as the rights of the State were concerned, and at most only operated to transfer to the latter the benefit of Monroe's contract as attorney, nor for the reasons we have indicated, did the approval of the Auditor increase or enlarge the rights of Mulligan so acquired.

2. Regarding Mulligan as the assignee and beneficiary merely of the contract of the auditor with Monroe, we have next to consider what rights Monroe really had under his contract, and how they were affected by the act of the legislature.

As the possession of the property was never acquired by

136 the agent of the State, nor by Monroe, or even Mulligan, unless he did so constructively by his agreement with John Corbin, which was not so far regarded as to be relied on to bar the trial of the cause in the court of appeals, and as no suit was prosecuted against Martha A. Corbin, jr., to divest her of her title in remainder, under the sheriff's deed, it may well be doubted whether Monroe, under his contract, was entitled to any compensation.

But, however this may be, we are of the opinion, that as the title remained in the State when the act of the legislature was passed, of which Monroe, through his official position, must be presumed to have had notice, and as the act had been approved and become a matter of record in the office of the secretary of state, although not in force when the deeds were accepted under which the ap-
137 pellee claims the property, they must be regarded as having been accepted with notice of the legislative act, which, at the expiration of sixty days from its passage, operated to vest in the appellants whatever title the State had acquired by the death of Solomon Brindley.

In coming to this conclusion we have not overlooked the objection taken for the appellee, that the act of the legislature was inhibited by the constitution, as impairing the obligation of a contract.

If the State, though her officers had legally undertaken to compensate Monroe for his services, in the contingency of his recovering the possession of the property, by conveying a moiety of it to him, this contingent and prospective contract did not in law or equity vest the title in him. Construed in its aspect most favorable to him, it only conferred on him the right, whenever he should fully comply
138 with his part of the agreement, to demand a specific execution, or a just reparation for the failure of the commonwealth to execute her contract.

The power of the legislature to grant to individuals the title of the State to lands, was expressly recognized by this court in the case of Patterson *vs.* Trabue, 3 J. J. Marshall, 598. That the ends of simple justice demanded the exercise of this power, is apparent from the contract itself, by which Monroe was employed, for the right of dower therein reserved for the widow of Barry was wholly inconsistent with a right in the State to the property by escheat, and its recognition virtually cancelled the validity of the appellant's title.

There was still another consideration, which, although it failed to restrain the officers and agents of the State from proceeding to recover the property, was, no doubt, a controlling influence, and
139 justly so, with the legislature. The execution against Barry's estate, under which the property was purchased in 1843, was in favor of the old Bank of Kentucky.

It is a part of the financial history of the State, and must be taken as judicially known, that in 1843, said institution was mainly owned by the State, and under its management and control. The commonwealth having thus derived the benefit of the sheriff's sale, it was but an act of justice in the legislature to give validity to the sale by perfecting and securing the title of the purchasers.

Wherefore (Judge Robertson not sitting) the judgment is reversed, and the cause remanded with directions to dismiss the action and adjudge to the appellant's their costs.

A copy. Attest.:

140 And afterwards, to wit, at court held as aforesaid, on the 28th day of February, 1867.

Came appellee, by counsel, and filed a petition for rehearing herein, but the court not being fully advised took time.

The following is a copy of the petition for rehearing, viz:

141 STATE OF KENTUCKY, *Court of Appeals:*

Pet'n for rehearing.

JOHN CORBIN *et al*, appellants,
against
DENNIS MULLIGAN, appellee.
} Filed Febr'y 28th, 1867.

The appellee, Dennis Mulligan, by his attorney, respectfully ask this court to grant a rehearing of this cause, for the reasons hereinafter set forth.

They believe the court erred in the judgment of reversal rendered herein, and they think if an opportunity were given them for full argument of the case in this court, they would be able to convince this court that appellee, Mulligan, is the legal owner of the property in controversy. Unfortunately, they did not have an opportunity to argue this case orally at the time it was called for trial, because Judge Williams was absent, and Judge Robertson
142 having been an attorney in the case could not legally preside on the trial, there not being a quorum of judges present, no argument could then be had. We, therefore, hope an opportunity will be granted to make a thorough argument of the case, on a trial to be had hereafter, for the reasons that that unfortunate state of affairs was no part of ours.

The bare fact that Thos. B. Monroe stated, in his testimony, that he knew the fact that the approval by the auditor of the sale, by him as agent of the State of Kentucky, of the escheated property, and that it was his duty to carry the act of the legislature to the governor for his official signature, and that he had opportunity thereby to know that the auditor approved the said sale by him to Mulligan, before the governor approved the "contract," does not warrant the further conclusion of the court, that he, Monroe, purposely
143 withheld the contract to obtain a technical advantage for himself and Mulligan. But the high position he held, as secretary of state, taken in connection with his elevated character, ought to warrant a contrary belief. Besides all the testimony goes to show that he acted honestly in the matter, and there is no evidence in the whole testimony, either direct or inferential, that he tried to defeat the will of the legislature in any undue manner, as we think and respectively submit to this court.

The inference of the court is, therefore, unwarranted. The objection taken in the opinion that Monroe had no right to sell escheated property, is not well taken, for the following reasons, the law of Kentucky, page 460, article 2, vol. 1, section 2, Revised Statues, says, "The auditor may at any time remove an agent and ap-
144 point another, or fill any vacancy in that office." From this it is clear that the agent appointed by the auditor is different from the escheator, and may be appointed by the auditor or removed by him. Thomas B. Monroe acted as agent, and so described himself, and was so recognized by the auditor, and it is presumable thereby the he was that agent.

There is certainly no evidence in the case, that he was not. It is a principal of law, that the approval of an act after the fact of execution, constitutes an agent, as well as an appointment of agent before hand. The auditor approved the act of sale of the escheated property by Thomas B. Monroe, to Mulligan, after that sale, and thereby constituted him an agent in the matter of the said sale. Even, or although he might never have been appointed previously to that sale. See auditor's approval of the sale in the record,
145 page 25. The Revised Statutes, vol. 1, page 461, article 3, section 4, says, "The auditor, after the purchace money for the land, so sold, is paid into the treasury shall convey the title of the commonwealth therein to the purchaser, or his assignee, his heirs or devisees." In this case the money properly coming to the State for her part of the escheat was paid into the treasury; see treasurer's receipt, page 25 of the record. The auditor having constituted Monroe agent and approved his sale, the money due the State of Kentucky for her moiety of the escheat having been duly paid into the treasury, and the auditor having conveyed by deed to Monroe & Mulligan, as by law required to convey.—See auditor's deeds on page 10 of the record—and the auditor having approved the sale by Monroe as agent before the Corbin act was approved by the
146 governor, how could anything pass by the Corbin act, the State having by her own auditor, and authorized officer, in pursuance of her own laws, sold the escheat once already to Mulligan, how could she afterwards convey it by act of the legislature to the Corbins, or what remains to be conveyed after it was already conveyed to the purchaser?

We think this court ought to presume that the auditor did everything which he ought to have done, and that there was no irregularity in his proceedings in the sale by him of the escheated property.

Thomas B. Monroe, by his written contract with the auditor, was legally appointed attorney to prosecute and recover the said escheat. See his contract legally entered into with the auditor on behalf of the State of Kentucky, in the record, page 26, and Revised Statutes, vol. 1, page 464, amendatory act, authorizing auditor to employ
147 attorneys for recovery of escheated property.

The State of Kentucky was in possession legally of the escheated property by Monroe's recovery of said property under his contract with the auditor, and the Corbin's were only squatters on

State property, and never could have had any possession against the State. No squatter can oust the State of her right of property. See the case of "Chiles *vs.* Calk," 4th Bibb, page 554.

This court seems to overlook the fact that Thos. B. Monroe, by his contract with the State through its auditor, was entitled to one moiety of the escheat for his services in the event of recovery, and that he did recover is beyond doubt. In proof of which, see record of the suit of "The commonwealth of Kentucky *vs.* Corbin & others," on record in this suit, and affirmance thereof in the court of ap-
148 peals, all in the record in this case. Will this honorable court say, that Monroe's contract with the State was void, and that he was entitled to no moiety of the escheat as compensation, or that he did not recover the escheat, or that a State, any more than an individual, ought to be dishonest, or that the State of Kentucky ought to be generous before she is just, or that she ought to cheat Monroe, in order to give gifts to the Corbins?

But will this honorable court say Monroe's contract with the State, and his recovery of the escheated premises does not amount to a title, or even, if the court pleases, a "title bond."

But when it is in the record, that Monroe, not only contracted with the estate for one moiety of the escheated premises, in the event of success, and that he did succeed in the recovery, under his
149 written contract, and that the auditor, on behalf of the State, conveyed to him that moiety by deed, as the auditor had a right to do, and that Monroe and wife conveyed that moiety to Mulligan; will the court say, that amounts to nothing, and that Mulligan is not even entitled to that moiety? and the State of Kentucky and Monroe shall both pocket Mulligan's money for nothing, (and Mulligan is an innocent purchaser.)

This hon. court makes mention of the fact that Mulligan leased the premises to Corbin, and then say that that lease was not relied on. But this hon. court will see, by looking at Mulligan's petition in the record in this suit, that the lease is relied on. this suit, and that lease is in proof in the depositions of John McCoy and Joseph Harrison, in pages 62 and 66 of the record, and it is, therefore, put beyond doubt, that Mulligan was in legal possession of said premises, as well as in actual possession by his tenant, Corbin.
150 Thus the State, the agent, and Mulligan were in possession of the premises, and Corbin is estopped to deny Mulligan's title.

This honorable court says: "As no suit was prosecuted to divest Martha A. Corbin of her title under the sheriff's deed, it may well be doubted if Monroe was entitled to any compensation." How can this court argue thus? When Martha A. Corbin, jr., even if that sheriff's deed had been valid, had no present interest, but only remainder, and could not in any way be effected by not being a party to that suit; and, above all, when this honorable court, by its own solemn decision, decided that the late Hon. W. T. Barry, and his heirs and executors had no title, or color of title, to the property in controversy, and that the sale by the sheriff of Fayette county,

under the execution in favor of the Bank of Kentucky, was
151 void, Barry never owned or possessed the said property, and that the deed by the sheriff of Fayette county to the Corbin's, under said sale by the said sheriff, conveyed nothing, because Barry never owned the said property; and that, in short, all the proceedings under that said execution, both as to the sheriff of Fayette county, the Bank of Kentucky, Macy Thwait's, James March, Ann Mitchell, and all the Corbin's, were void and of no effect, because Barry never owned said property. See the record of the suit of the "Commonwealth of Kentucky against John Corbin and others," and the affirmance thereof in the court of appeals in the record of this suit, wherein that sale by the sheriff of Fayette county and his deeds were specially relied on, and solemnly decided by this court to be illegal and void, and this court is bound by that decision; and
152 the State of Kentucky has no other evidence of title to said escheated property but what it derived through the agency of Thos. B. Monroe in the said suit which he so successfully prosecuted in the Fayette circuit court, and in the court of appeals. And in this connection permit us to remark, that no intervention of an agent, nor written instructions to him by the auditor to sell the escheated property, were necessary to enable the auditor to convey to Monroe his moiety of the escheat.

Monroe's contract with the auditor entitled him to one equal moiety of the escheat, not a part of the price, but an equal moiety of the lot escheated. (See record, the contract, page 26.)

Now, no sale under written instructions from the auditor to the agent was necessary, in so far as related to the conveyance of Monroe's moiety to Monroe by the auditor; and the court will
153 doubtless perceive this at once. Monroe had paid the State of Kentucky the consideration by his services in the recovery of the escheat. The auditor conveyed to him, by deed, the moiety to which he was entitled. (See auditor's deed to Monroe in the record.) This moiety Monroe and wife conveyed to Mulligan. Does not this make Mulligan's title complete to Monroe's moiety? Nor were written authority or instructions from the auditor needed to enable Monroe to contract to sell his own moiety to Mulligan, even if it were admitted he was not the agent, which we do not admit, on no approval or want of approval by the auditor could deprive Monroe of the right to contract and sell his interest in his own moiety whether he was agent to sell the State's part or not; and as the auditor approved Monroe's sale of all the escheat as to the State's and his own part before the governor approved the Corbin act," and as the auditor conveyed to Monroe and to Mulligan before
154 the Corbin act went into effect, is this not conclusive as to Monroe's part at all events, and, as we contend, to the whole escheat?

In relation to the act of assembly attempting to donate the escheat to the Corbins, we respectfully call the attention of the court to the fact that the State of Kentucky has no other evidence of title on earth to the said escheated property than what she derived through the

intervention and services of Monroe, by means of his contract with the State through the late auditor, Page, and the result of the suit of the "Commonwealth against Corbin and others," in the Fayette circuit court, and affirmance thereof by the court of appeals, all conducted under authority of that contract; and Monroe still moving and acting in the matter as agent and attorney of the State of Kentucky, must, we think, be presumed and taken as such agent, even if no evidence of his appointment existed. And does not
155 the subsequent recognition of his agency by the late auditor, Grant Green, constitute him agent, if no other agency appeared? But as agent of the State of Kentucky, he sold the State's part of the escheat to Mulligan. (See Monroe's contract with Mulligan in the record.)

This sale he, as agent, reported to the auditor. (See report of sale in the record.) The auditor approved the sale. (See auditor's approval in the record.) The auditor approved said report of sale before the governor of Kentucky approved the Corbin act, or act of the assembly attempting to donate the escheat to the Corbins. (See deposition of John McCoy, esq., and Richard A. Buckner, esq., on pages of the record.)

The auditor, by deed, conveyed to Monroe his equal moiety of the escheated property before the Corbin act could have gone into
156 operation, which we think is conclusive as to Monroe's moiety, (see auditor's deed to Monroe, on page of the record;) and likewise conveyed to Mulligan, by deed, the State's part or moiety of said escheat before the Corbin act went into effect, (see auditor's deed to Mulligan, on page of the record,) which we think conclusive. The Corbin act went into effect sixty days after its passage. (See Corbin act, on page of the record.) The deeds were all completed within and before that time. (See date of the Corbin act and dates of the several deeds in the record, pages .)

From all of which we think the title to the escheat undoubtedly passed to Monroe and Mulligan. And we would here remark that we cannot see how this court can come to the conclusion expressed in this connection in its written opinion, that because Monroe was at the time of the passage of the Corbin act, secretary of state,
157 that that effected him with notice of the Corbin act, and that that notice deprived him of his rights acquired under his contract with the State of Kentucky through its auditor, as well as under the deeds of conveyance to him by the auditor. Even if he had notice, which we do not admit, how could he prevent the legislature of Kentucky from perpetrating that act of injustice, which they attempted to perpetrate? or what power or control had he over their actions?

But the fact is beyond denial that Monroe was, by his contract with the State of Kentucky, through its auditor, entitled to a moiety of the escheat in the event of recovery. (See Monroe's contract with with the State, page of the record.) It was likewise beyond doubt that Monroe, in pursuance of said contract, did recover the said escheat, and did thereby entitle himself to one moiety of the said
158 escheat. (See record of the suit of the commonwealth of

Kentucky against Corbin and others, in the Fayette circuit court, and affirmance thereof in the court of appeals, on pages of the record.)

We are, therefore, forced again to bring to the notice of this court the fact that Monroe, having undoubtedly substantially complyed with his undertaking in his contract with the State, and having executed his part or undertaking in the contract, became entitled to rights under that contract, which rights the Corbin act, attempting to deprive him of, is an act impairing a contract, and not only impairing but destroying and disregarding it entirely, and is, therefore, clearly unconstitutional. (See Constitution of United States and constitution of the commonwealth of Kentucky.)

This court says: "If the State, through its officers, had legally contracted to compensate Monroe for his services in the contin-
159 gency of his recovering possession of the property by conveying a moiety of it to him, this contingency and prospective contract did not in law or equity entitle him, &c. Does this court forget the fact that the State of Kentucky, by its auditor, did contract with Monroe to sue for and recover the escheat, and does the court forget the fact that Monroe did sue for and recover the escheat? Does the court say the contract was illegal, or that Monroe did not recover the escheat? This court says such a contract does not vest the title in Monroe, either in law or in equity. Even if that position were well taken, which we do not admit, is there no legal contract, and does Monroe acquire no rights under it? Can the State of Kentucky avail herself of the escheat, as recovered by Monroe, under his contract with the State? Can she, then, give it away, and then, through her court of appeals, turn round and say to Monroe,
160 "Your contract with us was illegal; you are entitled to nothing; but we obtained the property through you; we will keep it, and convey it away to the Corbins, but you shall have nothing, although we have no title to the property but what we derived through you and your exertions, under your contract with us." Or will this court say, because a squatter was on the escheat, Monroe never recovered possession, although that squatter, Corbin, took a lease under Mulligan, and thereby admitted the State's possession through Mulligan? Or will this court hunt a small technical excuse for the legislature, to enable them to pass an act unconstitutional, and impairing the obligation of a contract? or will this court decide whether the act of the legislature herein is unconstitutional, as we contend?

161 We hope the court will so decide this act. Monroe's contract gave him a right to a moitey when he did recover the escheat. He did recover the escheat, this we have repeatedly spoken of, and the record bears us out in what we have said. (See record, &c.) He obtained possession for the State through Mulligan lease to Corbin. (See depositions of John McCoy,& Joseph Harrison, in the record.) Monroe did all he undertook to do, and therefore entitled himself to a moiety of the escheat. ("Compensation.")

The Corbin act attempted to deprive him of that moiety or "com-

pensation," it is, therefore, according to the constitution of the United States and the constitution of the State of Kentucky, unconstitutional, and we sincerely hope the court will give a more full and thorough consideration to this point in the matter. We would
162 likewise here remark, lest we might forget it, that in equity a substantial performance or complyance with a contract is sufficient, without a technical performance as at law, without yielding the ground that Monroe has strictly performed and complied with his contract; we submit to this court if he has not substantially performed it, and is not this sufficient, in an equitable proceeding, which this proceeding is? Without stopping to enquire or contest about the right of the State to grant lands to individuals when such lands are clearly the property of the State, in a general way, we will remark to this court, that the present attempt to grant or give this particular property by the legislature, present quite a different feature, because of the manner, and under, and by authority of
163 the particular law, by which Monroe acquired it for the State and himself. It became to a certain extent private property, by virtue of Monroe's contract with the State, through her auditor, entitling him to one moiety, and by the sale of Monroe to Mulligan, and by the conveyance of the auditor to Monroe, and Mulligan, therefore, presents the feature of an attempt by the State to take private property without compensation, which is unconstitutional, even when taken for public use, but it presents the anomally of taking private property and granting it gratuitously to individuals, which is unconstitutional, even with compensation, which is not pretended to have been given by the parties or by the legislature.

The reserve of dower to the widow of the late Hon. William T. Barry, by the late auditor Page, in the contract of the State of Kentucky with Monroe for the recovery of the escheat, was a
164 simple and charitable mistake by the said auditor Page, for the decision of the suit of the commonwealth of Kentucky against John Corbin & others, in the Fayette circuit court, conducted by Monroe, (now in the record of this suit,) by which the State of Kentucky derived whatever of title she had to the escheat, shews that Mrs. Barry has no claim or right to dower whatever, because her late husband, Wm. T. Barrey, had never owned the property, and if the court argues that that circumstance was evidence of a title in Corbin, or any one else, how then can the State show any title to the property in controversy? or how can this court say the act of the legislature can confer a title on the Corbins, if the State no title herself?

We are forced to these remarks by the position taken in
165 page 14 of the opinion of this court, that the recognition by the contract of Monroe with the auditor, of dower to Mrs. Barry, was evidence of title in the appellants, and we think we answer that objection fully when we show that Mrs. Barry had no right to dower, that if Corbin or Barry had the title, how then could the State grant what was not hers?

And, how can this court say, the act of the legislature of Kentucky

could convey the title the Corbins? or why would Corbin beg from the legislature what was already his own, and not theirs to give?

On page 15 of the opinion of the court, reference is again made to the execution in favor of the late Bank of Kentucky against the heirs and executors of Barry, and the sale thereunder by the sheriff of Fayette county. We are again forced to remind this court that
166 by its own solemn decision, now on record in this suit, decided on the appeal of Corbin and others against the commonwealth of Kentucky, that Barry did not own the property, and that the sale by the sheriff of Fayette county conveyed nothing and was void; neither Thwaits, nor March, nor the Corbins, nor Mrs. Mitchell obtained any title under that sale. (See the record of the case of the commonwealth of Kentucky *against* John Corbin & others, in the Fayette circuit court, and affirmance thereof on appeal to this court, on pages of the record.)

We cannot think, however, that the charitable intention of the legislature of Kentucky in the Corbin act, as inferred by this court, constitutes any legal ground or warrants, this court to deprive Monroe and Mulligan of their property.

167 For all which reasons we respectfully ask this honorable court to grant a rehearing herein, as we think it will be in furtherence of justice, equity, and law.

JOHN McCOY, *P. Q.*
JOHN B. HUSTON, *P. Q.*

Just this thought here for myself, has not Mulligan a clear equitable right to the moiety of Monroe recognized and sanctioned by the States lawful authorities, under a bona fide purchase, without notice of any obstruction, and also to a lien for the balance of the purchase money that went into the treasury on the other moiety.

How avoid this?

J. B. H.

And afterwards, to wit, at a court held as aforesaid, on the 8th March, 1867.

The court being sufficiently advised it is considered that the petition for rehearing herein be overruled.

168 STATE OF KENTUCKY, *Court of Appeals:*

I, Alvin Duval, clerk of the court of appeals for the State of Kentucky, do certify that the foregoing one hundred and sixty-one pages, appended to the above writ of error, contain a full, true, and complete transcript of the record and proceedings had in the cause mentioned in the caption hereof, now on file in my office.

Given under my hand and the seal of my office, this 18th day of March, 1867.

[SEAL.]

A. DUVALL, *C. C. A.*
By CHAS. HAYDON,
D. C. C. A.

169 And afterwards, to wit, on the 26th day of April, 1867, the following order was entered:

CORBIN
vs.
MULLIGAN.

FAYETTE.

Came appellee, by counsel, and on his motion, it is ordered that the opinion herein be considered as a part of the record in this cause.

Attest: A. DUVALL, *C. C. A.*
By CHA'S HAYDON, *D. C.*

170 STATE OF KENTUCKY,
Fayette Circuit Court, sct:

DENNIS MULLIGAN, plaintiff,
against
JOHN CORBIN and OTHERS, defendants. } In equity.

The following are true copies of the certificates attached to plaintiff's exhibits herein, which were left out of the record, viz:

COMMONWEALTH OF KENTUCKY,
Fayette County, sct:

I, Sanders D. Bruce, clerk of the county court for the county aforesaid, do certify that this deed and receipt from Tho's B. Monroe, jr., ag't and att'y for the State of Kentucky, to Dennis Mulligan, was this day produced to me, in my office, and acknowledged by the said Tho's B. Monroe, jr., as ag't and att'y aforesaid, to be his act and deed, and ordered to be recorded.

Whereupon, said deed and receipt, and this certificate have been duly admitted to record in my office.

Given under my hand this 17 day of April, 1861.

Att.: SAUNDERS D. BRUCE, *C. F. C. C.*
A copy. Att.: ERNEST BRENNAN, *Cl'k.*

STATE OF KENTUCKY, *ss:*

I, Alexander H. Rennick, clerk of the county court for the
171 county of Franklin, in the State aforesaid, do certify, that the within deed from Thomas B. Monroe, jr., and Elizabeth G. Monroe, his wife, to Dennis Mulligan, was produced to me in my office on this day, and was acknowledged by Elizabeth G. Monroe to be her act and deed, and the same is certified to the proper officer for record.

Witness my hand as clerk, this 26 day of April, 1861.

A. H. RENNICK, *Cl'k.*

Franklin county court.

COMMONWEALTH OF KENTUCKY,
Fayette County, sct:

I, Sanders D. Bruce, clerk of the county court for the county aforesaid, do certify that this deed from Tho's B. Monroe, jr., and

Elizabeth G., his wife, to Dennis Mulligan, was this day produced to me, in my office, with the certificate thereon endorsed, and acknowledged by said Tho's B. Monroe, jr., to be his act and deed, and ordered to be recorded.

Whereupon, said deed and certificate, and this certificate have been duly admitted to record in my office.

Given under my hand this 29th day of May, 1861.

Att.: SANDERS D. BRUCE,
A copy. Att.: ERNEST BRENNAN, *Cl'k.*

172 STATE OF KENTUCKY, *ss:*

I, Alexander H. Rennick, clerk of the county court for the county of Franklin, in the State aforesaid, do certify that this deed, from Grant Green, auditor of public accounts to Thomas B. Monroe, jr., and Dennis Mulligan, was this day produced to me, in my office, and was acknowledged by the said Grant Green to be his act and deed as auditor of public accounts, and the same is certified to the clerk of the county court for the county of Fayette for record.

Witness my name as clerk as aforesaid, this 17 day of April, 1861.

A. H. RENNICK, *Cl'k.*

Franklin county court, Ky.

COMMONWEALTH OF KENTUCKY,
Fayette County, sct:

I, Sanders D. Bruce, clerk of the county court for the county aforesaid, do certify that this deed, from Grant Green, auditor of public accounts, to T. B. Monroe, jr., and Dennis Mulligan, was this day produced to me in my office, with the certificate thereon endorsed, and ordered to be recorded.

Whereupon, said deed and certificate, and this certificate, have been duly admitted to record in my office.

173 Given under my hand this 19 day of April, 1861.

Att.: SANDERS D. BRUCE, *C. F. C. C.*
A copy. Att.: E. BRENNAN, *Cl'k.*

The following memorandum is appended to article of agreement between Tho's S. Page, auditor, and Tho's B. Monroe, jr., att'y-at-law, to wit:

Agents appointed.

D. McCarty Payne, 24 March, 1840.
Thos. B. Baxter, appoined 1 Ap'l, 1843.
Rep'd 14 Ap'l, 1853, dead.
J. W. Cochran, appointed 17 Ap'l, 1857.
Attest: GRANT GREEN, *Aud.*

STATE OF KENTUCKY,
Fayette Circuit Court, sct:

I, John B. Norton, clerk of the court for the circuit aforesaid, do certify that the foregoing are true copies of the certificates and

memorandum attached to the exhibits mentioned, which were left out of the record in copying same in cause mentioned herein.

Given under my hand this 14th day of December, 1866.

Att.: JNO. B. NORTON, *C. F. C. C.*

174 And afterwards, to wit: on the , comes the said Dennis Mulligan, plaintiff in error, by , his attorneys, and says that in the record and process aforesaid, by the said court of appeals of Kentucky, it is manifestly erred in this, to wit: that the judgement aforesaid, was given in form aforesaid, for the said John Corbin, Marth. A. Corbin, and Martha Corbin, jr., defendants in error, against the aforesaid Dennis Mulligan, plaintiff in error, whereby the law of the land judgment should have been given for the said Dennis Mulligan against the said John Corbin, Martha Ann Corbin, and Martha Corbin jr., and this he is ready to verify, and the said Dennis Mulligan, by his attorneys aforesaid, comes and says, that in the giving the judgement aforesaid by the said court of appeals of Ky., it is manifestly erred in this,

175 that said judgement sustains the act of the Kentucky legislature, entitled "An act for the benefit of Martha A. Corbin," which said act is contrary to the Constitution and laws of the United States of America, in this, that it is a law impairing the obligation of a contract; in this, that it is a law taking private property for public use without just compensation; in this, that it is a retrospective law; it is erred in this, that said judgement is contrary to the weight of testimony in this case; in this, that it is contrary to the equity of the case; in this. that it is contrary to the law and the facts of the case; in this, that it is contrary to the constitution of the *of the* State of Kentucky, because said judgment of the said court of appeals of Kentucky sustains the above-recited act of the legislature

176 of the State of Kentucky, which is a law impairing a contract, and is a law taking private property without just compensation, and is a retrospective law; it is erred in this, because the said decision of the said court of appeals of Kentucky is contrary to the written contract of the State of Kentucky with the late Thomas B. Monroe, witnessed and entered into by said State's own proper officers in pursuance of said State's own law; in this, that the said decision is contrary to the State's own law, allowing out of escheated property compensation to attorneys for recovery of escheats; in this, that it deprives Dennis Mulligan, plaintiff in error, of his property without compensation; in this, that it deprives him of the benefit of his property purchased by him from the State of Kentucky; in this, that it deprives him of the benefit of his property purchased by

177 him from the late Thomas B. Monroe, jr.; in this, that it is contrary to the decision of the court of appeals of Kentucky, in the suit of the commonwealth of Kentucky against John Corbin and others, which is part of the record; in this, that it attempts to sustain the claim of Ann Mitchell and others, under a sham sale by the sheriff of Fayette county, under an execution in favor of the late bank of Kentucky against the heirs and executors of the late Wil-

liam T. Barry, the whole of which sale deeds and proceedings were solemnly adjudged to be null and void by the decision of the court of appeals of Kentucky, in said suit of the commonwealth of Kentucky against John Corbin, which decision of said court of appeals is now in the record of this case, and is hereby referred to.

And it is erred in this, that plaintiff in error, Dennis Mul-
178 ligan, especially invoked the benefit of the Constitution of the United States in the argument of the case in his written brief, and in his petition for a rehearing, and it was denied to him by said court of appeals of Kentucky.

Whereupon, the said Dennis Mulligan, by his attorneys aforesaid, saith, that in the record and proceedings of process aforesaid, as also in the giving of the judgement aforesaid, it is manifestly erred, alleging the errors aforesaid, by him in the form aforesaid alleged, and prays that the judgement aforesaid, for the errors aforesaid, and others in the record and process aforesaid being, may be reversed, annulled, and entirely for nothing esteemed, and that the said
179 defendants in error may to the errors aforesaid, and that the said Supreme Court of the United States of America may proceed to the examination, as well of the record and process aforesaid, as of the matters aforesaid above, for error assigned.

Supreme Court of the United States.

DENNIS MULLIGAN, PLAINTIFF,

vs.

JNO. CORBIN, MARTHA ANN CORBIN, AND MARTHA CORBIN, JR., DEFENDANTS.

WRIT OF ERROR FROM DISTRICT OF KENTUCKY.

Coyle & Towers, Stationers.

Supreme Court of the United States.

DENNIS MULLIGAN, PLAINTIFF,

vs.

JNO. CORBIN, MARTHA ANN CORBIN, AND MARTHA CORBIN, JR., DEFENDANTS.

WRIT OF ERROR FROM DISTRICT OF KENTUCKY.

The appellant, Dennis Mulligan, brought this suit in the Fayette circuit court of the State of Kentucky, *vs.* Jno. Corbin and Martha Ann, his wife, for the recovery of a house and lot, situated in Lexington in that State, which he claimed under a paper title from the Commonwealth of Kentucky; and also upon the fact that John Corbin held possession of said property as his tenant, and had set up a claim to it in hostility to his title. The appellees, the Corbins, relied upon three grounds of defence: 1. That the paper title of Mulligan was invalid, and did not invest him with any right to the property. 2. That the property had belonged to the estate of Wm. T. Barry, deceased, and execution against his heirs had been levied upon it, and sale made by the sheriff, and a deed of conveyance for it executed by him to them, which invested them with the title to the property. 3. That they had had an adverse and continued possession of it for twenty years before the commencement of this suit.

There is in the record a deed of conveyance for this lot

from Thos. Bodley and wife to Solomon Bundy, a man of color, bearing date 28th December, 1808. (See printed copy of record, page 20.)

Both parties attempt to deduce title from Bundy: by Mulligan, that Bundy died without heirs and intestate, whereby the house and lot escheated to the Commonwealth of Kentucky, and her title, thus acquired, was regularly conveyed to him; and the position taken by the Corbins is, that Barry purchased the house and lot of Bundy, and his title thereby passed to said Barry, and then to them, by sale and conveyance by the sheriff to them. Both parties to this suit claiming under Bundy, one of the principal questions in the case is, which of them holds his title?

Another question in the case arises on an act, and its effect, passed by the legislature of Kentucky, April 4th, 1861, (printed Record, 15,) by which the right of the Commonwealth to the property in contest, acquired as an escheat by reason of the death of Bundy without heirs and intestate, was released to Martha Ann Corbin, the mother, during her life, and after her death to Martha Ann, the daughter. The validity of this act was assailed by Mulligan in the circuit court, on the ground that it was unconstitutional and void. The circuit court rendered judgment in his favor for the house and lot, but the Corbins appealed to the court of appeals of the State, and that court sustained the validity of the act of the legislature aforesaid, and upon its force and effect reversed the judgment of the court below, and ordered the dismissal of Mulligan's suit; and it is that act of the legislature of Kentucky, and the question whether it is repugnant to the Constitution of the United States, that gives this court jurisdiction of the case.

The law of escheat of Kentucky applicable to this case may be found in Stanton's Revised Statutes of Kentucky, volume 1, 458, and the following pages. All lands within the State, the property of persons who had or might die without heirs, and intestate as to such lands, vested in the

Commonwealth without office found. The auditor of public accounts was authorized to appoint agents for each county, to look after the interests of the State in connection with escheated property, who were required to give bond with security before entering upon the performance of the duties of their office; and by an act approved March 9, 1854, the auditor was authorized, with the approbation of the Governor and attorney general, to employ an attorney-at-law for the recovery of *any* escheated property belonging to the Commonwealth, and *provide for his compensation out of such escheated property: Provided*, Such compensation shall be fixed by a written contract, on which the approval of the Governor and attorney general shall be endorsed. (See same book, 464.)

The attorneys-at-law who may be employed under this law are not required to give bond, but other guards to protect the interests of the Commonwealth are provided. On the 1st of November, 1855, Thomas Page, auditor of public accounts, with the approval of C. S. Morehead, Governor, and J. Harlan, attorney general, made an agreement with Thomas B. Monroe, attorney-at-law, by which he was employed to sue for and recover the house and lot in contest as an escheat, and was to be entitled to one equal moiety of the recovery for his compensation. (Printed Record, 8 and 17.) On the 21st of July, 1856, a suit was brought in the name of the Commonwealth of Kentucky, by Thomas Baxter, her agent, and Thomas B. Monroe, Jr., her attorney-at-law, against John Corbin, then in possession of said house and lot, to recover them as escheats to the Commonwealth by reason of the owner, Solomon Bundy, having died without heirs, and intestate as to said property; and on the 12th of August, 1856, the plaintiff filed her amended petition, in which she made Martha Ann Corbin, wife of said John Corbin, also defendant to said suit, and prayed judgment against her likewise for said house and lot. (See printed Record, 20, 21, 22, &c.) This suit was earnestly litigated by the parties, the defendants relying upon the

sheriff's sale of the house and lot as the property of the heirs of William T. Barry, deceased, and the deed of conveyance therefor by the sheriff to the said Martha Ann Corbin. (See printed Record, 24, &c.)

It was decided by the circuit court, 25th August, 1858, and judgment was pronounced in favor of the plaintiff against Corbin and wife, for the recovery of said house and lot. From this judgment those defendants appealed to the court of appeals of the State; and the 9th December, 1859, that court affirmed the judgment of the inferior court. (See printed Record, pages 19, 25, and 28.)

The law authorizes suits in the name of the Commonwealth against *any person in possession of escheated* property, by the direction of the auditor. John Corbin and Martha Ann, his wife, were in possession of the house and lot in contest, she claiming an estate in it during her life under the deed from the sheriff; and their rights, as to the Commonwealth of Kentucky, are conclusively and finally adjudged against them in said suit. If the daughter, Martha Ann Corbin, had any reversionary or other interest in the property, she, not being a party to that suit, is not prejudiced by the judgment against her father and mother; but it is contended for the appellant that she had no estate or interest whatever in the property. And, on the other hand, it is urged for the appellees, the Corbins, that the appellant, Mulligan, has no right to a judgment against them for said house and lot, either in virtue of the paper title which he has shown, or by reason of John Corbin having taken a lease for the property from the said Mulligan. I will now proceed to the discussion of those points.

There is no controversy that the house and lot in contest had belonged to Solomon Bundy, and that he had a good title.

The question here arises, did Barry acquire Bundy's title. There is neither deed of conveyance nor contract in writing from Bundy to Barry in the record; nor is there word of

proof that such a deed or any agreement, written or verbal, between them, for this property, was ever made. The ground of the defence—that Barry purchased of Bundy the property in contest—is wholly unsustained, and will not be further noticed.

The next question upon the defence is, did Barry and his heirs have such a long and continued possession of the house and lot as to ripen into an estate and title, subject to levy and sale under execution against Barry's heirs.

There is neither proof nor allegation as to the time when Bundy died, though the evidence shows that it was sometime before the year 1833, when the cholera first made its appearance in Lexington. The next occupants to Bundy of the house and lot, as shown in this record, were some negroes, the slaves of William T. Barry, but how or when they got possession does not appear. The depositions of John Myers, B. C. Wood, and D. J. Merrill, show that Barry's slaves were occupying the house during the prevalence of the cholera in 1833, and that one of them, by the name of Peter, then died in it of that disease, and was succeeded by another colored man by the name of Wells, who rented it of a son of Barry. (See printed Record, pp. 27, 40, and 42.) The deposition of Joseph Ficklin was taken in the case of The Commonwealth of Kentucky *vs.* John and Martha Ann Corbin, aforesaid. A question might be made whether it is evidence in this case; but waiving it because of the privity between the appellant, Mulligan, and the Commonwealth, what is its effect? That he took "charge of Barry's estate in 1829, and administered upon it in 1835. At that time, (1829,) there was a house and lot nearly opposite Col. Dunham's, which I took charge of as his property, and continued to have charge of it to 1844, and longer. I don't know how much longer. During that time I put tenants in it as Barry's property. I think I *understood* it had been in Barry's possession from 1820. (Excepted to.) I wanted to sell it about 1840, but Judge Hickey, who had married Mr. Barry's widow, and I

differed as to the interest of Mr. Barry's widow, and I did not sell. I know that the Commonwealth Bank had pressing claims upon the estate of Barry during the time I was agent, as above mentioned. I *do not know how* Barry came into possession of the property, but *understood* he got it for some debt owed him by Solomon Bundy, in assistance in getting his freedom, or some of his family." (Excepted to.)

This is the whole of Ficklin's proof, and so far as it is not vague, unreliable, and incompetent hearsay, it only shows that he, as the agent of Barry, took possession of a house and lot nearly opposite Col. Dunham's, in 1829, and, as agent and as Barry's administrator, held it until 1844, "and longer." How much longer? This deposition of the agent and administrator shows inferentially, in connection with the execution against Barry's heirs, under which the house and lot were sold, that Barry was so much in debt as to be insolvent, and that he had no such estate, right, or interest in the house and lot as his creditors could reach by execution or suit in equity, or that his widow could have dower in it assigned to her. There is no proof, allegation, or intimation in the record of either of the two suits connected together in this record—that Bundy died either leaving heirs or having disposed of the house and lot by will or by sale to Barry; but every fact and aspect of both records is, that he died without heirs, and intestate as to this property, and without having disposed of it to Barry or any other person; and such was the conclusion of both the superior and inferior State courts in both suits aforesaid, and there is no evidence in this record to impugn those propositions. Ficklin does not prove that any person was in possession of the house and lot in 1829, when he took possession of them as Barry's property, nor does any other person prove an earlier possession of them for Barry than *about* the year 1833, and then a possession by his slaves. There was no possession shown of or for Barry before 1829, when it was taken by Ficklin as his agent, nor is there any fact in the record from which an earlier possession can be reasonably inferred.

It is unnecessary to state—it is a general legal truth—that a mere naked possession of the house and lot by Barry and his heirs, from 1829 to January, 1843, did not constitute such an estate or title as authorized the levy of an execution against Barry's heirs upon them, and their sale to satisfy it. The law of Kentucky which subjected lands to execution at that time is in these words: "Land to which the defendant has a legal title in fee or for life, or for a term, whether in reversion or remainder, may be taken and sold under execution." (Morehead & Brown's Laws of Ky., 482.)

Barry's heirs not having any such title to the house and lot, their sale by the sheriff under execution, and his deed of conveyance to Martha Ann Corbin and others, is void and of no effect. But there are two other fatal objections to the sheriff's deed. First, the execution, or an official copy of the execution under which the house and lot were sold, does not appear in the record. An original execution of *fieri facias* in favor of The Bank of Kentucky, *vs.* The heirs of Wm. T. Barry and others, with the sheriff's return upon it, that he had levied it upon the house and lot, but had not sold them for the want of bidders, is, with the judgment upon which it was issued, properly proved and in the record; but the execution under which the sale was made does not appear. There is a deed from the sheriff to Martha Ann Corbin and others for the house and lot copied in the record. (Printed copy, p. 24.) That deed recites that the sheriff had levied a *fieri facias* execution in favor of The Bank of Kentucky *vs.* The heirs of Wm. T. Barry and others on this house and lot, as the property of said heirs; that afterwards a *venditioni exponas* had issued from the same office, commanding the sheriff to expose to sale this property to satisfy the judgment in the original writ of *fieri facias* recited; and in obedience to this *vend. expo.*, he had sold the house and lot to James March, who had executed bond for the purchase money with Marcy Thwaits, his security; that they had by their written order directed the sheriff to make a deed for

the property to Martha Ann Corbin, for her separate use during her life, &c. The deed is in conformity to these directions.

In making out title to land under a sheriff's deed, both the judgment and the execution under which the sale was was made must be shown. (Dun *vs.* Mereweather, 1 Mar., 158; Martin *vs.* McCargo, 5 Litt., 293; Smith *vs.* Morman, 1 Mon., 154; Cox *vs.* Nelson, 1 Mon., 95; Stephens *vs.* Robertson, 3 Mon., 99; Terry *vs.* Blight, 3 Mon., 272; Biggs *vs.* Dorley, 7 B. Mon., 239.) There is but one writ of execution of The Bank of Kentucky *vs.* Barry's heirs and others shown in this record as the law requires—the *fieri facias* which the sheriff levied upon the house and lot. It comes from the proper office, a complete copy properly certified, and it shows that the house and lot were *not* sold under it. There is not in the record complete legal evidence of the sale of the house and lot by the sheriff, because there is not such evidence of the execution under which they were sold as the law requires. The recitation of it in the sheriff's deed, although required by law, does not dispense with the production of a certified copy of that writ from the proper office. If the sale was made under the *vend. expo.*, that writ must be shown. It is but a *special fieri facias,* commanding the sheriff to make sale of property previously levied upon but not sold, and by the law of Kentucky "the like proceedings shall be had on such writ as might and ought to have been had on the first execution." Indeed, this is the universal *office* of the *venditioni exponas.*

The clerk of the court in which judgment was rendered in favor of The Bank of Kentucky *vs.* Barry's heirs, &c., certifies that "on the 30th of November, 1842, a *venditioni exponas* issued to the sheriff of Fayette county directing the sale of the property levied on under a previous execution, and the same has never been returned." This naked certificate is not sufficient evidence of the loss of the execution, nor is it legal and sufficient secondary evidence to establish its existence, if its loss had been properly proven.

And another fatal objection to the sheriff's deed is, that it was not made to the purchaser of the house and lot at his sale; and this fact appears upon the face of the deed itself. "In all sales of land by virtue of an execution, the sheriff, or other officer, shall convey the same to the purchaser in writing, indented, sealed, and recorded, as the law directs for other conveyances of land, which deed shall recite the execution, purchase, and consideration, and shall be effectual for passing to the purchaser all the estate and interest which the debtor had and might lawfully part with in the lands.' (Morehead & Brown's Statute Laws of Ky., vol. 2, page 1,463.)

A subsequent statute authorized the sheriff to convey to the heirs of the purchaser, when he had died without the deed having been made to him. (Statute Laws of Ky., vol. 3, page 546.)

The laws of Kentucky, at the date of this sale, did not permit the sheriff to convey land which he had sold to any other person than the purchaser, or to his heirs, when he had died without getting a deed for it; and he could sell land only to the highest bidder. (Morehead & Brown's Statutes of Ky., 639.) His deed for the house and lot to Martha Ann Corbin and others recites that James March was both the highest bidder and the purchaser at the sale; and I maintain that the sheriff's deed to Martha Ann Corbin and others is without authority of law, and is void.

But the appellees attempt to avoid this objection by a direction to the sheriff accompanying the deed, in these words:

"I hereby direct that the sheriff make a deed for the lot sold under an execution in favor of the Bank of Kentucky against William T. Barry's heirs, to Martha Ann Corbin, during her life, and for her separate use, and after her death, to her daughter Martha Ann, during her life; and if she leaves descendants, to go to them, but with liberty to her to devise it to whom she pleases; and if she dies leaving no descendants

living at her death, then to Hartwell Etherington in fee simple. January 3, 1845.

"ANN Her × mark. MITCHELL.

"Test: M. C. JOHNSON."

Following this direction immediately is this further one:

"The sheriff will make a deed as above directed.

"M. THWAITS,
"JAS. MARCH."

The last direction has no date, but may be presumed to have been executed at the same time with the previous one, (January 3, 1845.) The deed bears date 15th day of August, 1846, and the property was sold 9th day of January, 1843; so that the sale to March, and the written directions by Ann Mitchell, Thwaits & March to the sheriff to make the deed to Corbin, the mother, Corbin, the daughter, and Hartwell Etherington, were separate, distinct, and distant transactions. The objection that the sheriff's deed is not made to the purchaser at his sale is not obviated by the direction of the purchaser to him to make the deed to the Corbins, because his power to make the deed is derived solely from the law, which requires him to make it to the purchaser, unless he be dead, and in that state of case, to his heirs. The sheriff, too, sells all the estate of the defendants in the execution as an entirety, and he has no more power to divide it up and convey separately a life estate to Corbin, the mother, a contingent remainder in fee simple to Corbin, the daugher, with power to devise absolutely, and contingent remainder over to Hartwell Etherington, than he had to make his deed to another person than the purchaser; and both were without authority of law.

The case of Small *vs.* Hodgen, (1 Litt., 16,) is not in conflict with those positions. There, at the time of the sale of the real estate, the sheriff, immediately after the property had been cried off, by the request and direction of the person who had made the highest bid, substituted for him another person as the purchaser, at the same bid, and took a

bond with the person who had bid as security, and made his return, naming the person thus substituted as the purchaser; and the court decided that the person to whom was thus given over the highest bid, at the time and place of its being made, and whom the sheriff then, before the transaction was accomplished, adopted as the purchaser, and whose name he returned upon the execution as such, was in fact and law the purchaser. But the court neither decided, recognized, nor intimated that after a sale had been fully consummated the sheriff had authority to substitute another person for the purchaser, even with his consent, and convey at a distant day the property to a stranger to the sale. Such a course of doing business would not only be without authority of law, but would prove a fruitful source of wrong and fraud.

But another equally fatal objection to this deed from the sheriff to the Corbins is, that there is no proof of the execution by March, or Thwaits, or Mrs. Ann Mitchell, of their respective written directions to the sheriff to make the deed for the property sold by him to the Corbins. The recitation of those directions in the deed, or their being appended or annexed to it, is no proof of their execution. The deed, therefore, must be treated as though no mention of those directions were in the record, and as without any authority or sanction of the purchaser, March, and consequently on that ground must be repudiated by this court.

There are, then, four objections to the deed of the sheriff to the Corbins, either of which is fatal: 1. Wm. T. Barry, or his heirs, had no estate or interest in the house and lot which was subject to execution and sale. 2. The execution under which the house and lot were sold is not legally proved. 3. The sheriff did not make the deed to the purchaser, or to the heirs of the purchaser. 4. If the purchaser could have authorized the sheriff to make his official deed to the Corbins, there is no sufficient or legal proof in the record that he ever gave such authority.

But there is another insuperable objection to the position

that Barry, or his heirs, or the Corbins, by deed or possession, acquired title to the house and lot. Their owner, Bundy, died without heirs and intestate, and thereupon all property and right in them without office found vested in the Commonwealth. This state of fact and law is set up and relied upon by the appellees, the Corbins, in pleading the act of the legislature based upon them, which attempts to release to Corbin, the mother, and Corbin, the daughter, title to the house and lot. The foundation of the claim of both the appellant and the appellees is the same; the ownership by Bundy of the house and lot, his death without heirs and intestate, and the consequent escheatment of the property to the Commonwealth. It was upon that state of fact and law that the court of appeals of Kentucky decided that the act of the legislature of April 4th, 1861, vested the title of the house and lot in the Corbins.

I will now proceed to examine that act, and its effect, in connection with the rights of Mulligan under the contract between the auditor of public accounts and Thos. B. Monroe, Jr., the contract between said Monroe and Mulligan, the deed of conveyance from the auditor to Monroe and Mulligan, the deed from Monroe and wife to Mulligan, and the lease of the property in contest by Mulligan to the appellee, John Corbin.

As before stated, that act was passed 4th of April, 1861, and there being no day named in it when it should take effect, by a general law of the State it went into operation sixty days thereafter, viz: June 3, 1861; which was after all the writings before named had been executed. The first in time of those writings is the contract between the auditor and Monroe, viz: November 1, 1855. Under it, Monroe, an attorney-at-law, commenced a suit in the name of the Commonwealth of Kentucky, by her agent, Thomas B. Baxter, *vs.* John Corbin, who was living on the property, to recover it as an escheat; and on the 20th of August, 1858, obtained a judgment for it in the Fayette circuit court, both

against John Corbin and Martha Ann, his wife; from that judgment they prosecuted an appeal to the court of appeals of the State, which court, December 9, 1859, affirmed the judgment of the court below. (See printed Record, pages 17, 18, 19, and 28.)

This contract between the auditor and Monroe is under the statute of the State of March 9, 1854, which authorizes the auditor, with the approbation of the Governor and the attorney general, to employ an attorney-at-law for the *recovery of any escheated property* belonging to the Commonwealth, and provide for his compensation out of such escheated property: *Provided*, That such compensation shall be fixed by a written contract, on which the approval of the Governor and the attorney general shall be endorsed. (See Stanton's Revised Statutes, 1st vol., 464.)

Monroe was employed to bring suit and *to recover* the house and lot in contest as property that had escheated to the Commonwealth, and was to have one equal moiety of the recovery for his compensation; and this whole contract was put in writing, signed by the auditor and Monroe, and approved and endorsed by the Governor and the attorney general.

When Monroe had *recovered* the house and lot for and in the name of the Commonwealth, he had performed his part of the contract, and thereby and then became entitled to one equal moiety of the recovery; and the auditor, on the 17th of April, 1861, before the act of the legislature releasing the right of the Commonwealth to the Corbins went into operation, conveyed one equal moiety of it to Monroe, and the other moiety to the appellant, Dennis Mulligan. (See printed Record, page 9.) But that act did not impair the rights of Monroe or his purchaser, Mulligan, to the moiety to which he was entitled, for several reasons.

1. The act of 1854 did not limit the compensation which the attorney-at-law was to receive, except it was to be out of the escheated property; the part or portion of that property

which he should have depended wholly on the discretion of the auditor and the stipulation of the contract, and whatever it was the auditor was to *provide for it* out of the escheated property. In cases of real estate, when this compensation was to be a moiety of the estate recovered, as the auditor was empowered to *provide for the compensation of the attorney out of it*, by implication he was also empowered to convey to the attorney the part to which he was entitled. That would be a reasonable, appropriate, and complete mode of making provision for his compensation out of the escheated property; and as any other mode might be tardy, if not impracticable, a liberal and just interpretation of the law would authorize it.

But if the auditor was not empowered by the law to make a deed of conveyance to Monroe for his moiety, this act of the legislature did not and was not intended to impair his rights, or the rights of Mulligan, who had purchased them. The Commonwealth, upon the judgment in her favor for the property as to one moiety, held the title for the benefit of Monroe, and his assignee, Mulligan. If the act had in the most explicit terms proposed to deprive them of or to impair their rights to the recovered property, it would have been of no effect, because it would have been violation of the obligation of the contract between the Commonwealth by the auditor and Monroe. Nor could the Corbins, with such a purpose by those who passed it, by any language that could have been employed in the law, have received any protection on the score that they were innocent purchasers for a valuable consideration without notice of the claims of Monroe; for they were not purchasers of the Commonwealth, and they had long had full notice of the claims of both Monroe and Mulligan to the property.

But it is apparent from the language of the act that any right or interest in the property which belonged to others, any which the State did not own, was not intended to be comprehended and released by it. Its language is, "that whatever interest in a small house and lot on Upper street,

in the city of Lexington, which was conveyed in the year 1808, by Thomas Bodley to Solomon Bundy, may *rightfully belong* to the State by escheat or otherwise, since the death of the said Bundy without any known legal heir, be, and the same is hereby, *released to* and vested in Martha Corbin." (See printed Record, 15.) If the Commonwealth had not been divested of the legal title to this property by the auditor's deed to Monroe and Mulligan, the equitable right to one moiety of it against her was certainly in Mulligan, in virtue of the contract between the auditor and Monroe, the recovery of the property for the Commonwealth by Monroe, and the transfer of his rights in it to Mulligan. If, previous to the passage of the act aforesaid, the Commonwealth held the legal title to one moiety of said property in trust for Monroe or Mulligan, and its effect was to vest Corbin, the mother, and Corbin, the daughter, with the legal title to the whole of the property, they also would hold one moiety of the property in the same trust.

The judgment of the court of appeals of Kentucky, in the aspect that this act of the legislature vested the Corbins, absolutely and for their own benefit, with the legal title to both moieties of the property in contest, cannot be maintained, and for that error should be reversed.

That act of the legislature of Kentucky should receive no special favor from this court, for obviously it was an improper interference by that department of a government to pass an equivocal act, giving gratuitously to one party in a suit not more meritorious than the other pending before another and the proper department of the same government an undue advantage, and belongs to a vicious class of legislation which has become much too frequent through the selfish enterprise of interested persons. It was a fraudulent device to evade the legal rights of one party, and to prop up the spurious claims of another, instead of leaving them to the impartial judgment of the courts. But I contend that the appellant, Mulligan, is rightfully entitled to a judgment for both moieties of the house and lot in contest.

On page 9, of the printed record, is one of the exhibits of Mulligan in these words:

"This memorandum witnesseth, that as attorney for the Commonwealth of Kentucky, I have agreed to sell to Dennis Mulligan a lot of ground adjoining his residence in the city of Lexington, being the same lot recently recovered of John Corbin by the Commonwealth, for the sum of four hundred dollars, one-half payable on the execution of a title bond; balance in one year thereafter.

"I agree, as attorney aforesaid, to *deliver possession* of said property to said Mulligan, and execute, or have executed the aforesaid bond within a reasonable time from date hereafter.

"THOMAS B. MONROE, JR.,
"Att'y for Commonwealth of Ky."

November 25, 1858.

On another page is another exhibit in these words:

GRANT GREEN, Esq., *Auditor:*

"DEAR SIR—As agent of the Commonwealth of Kentucky, I have recovered possession of a certain house and lot in the city of Lexington, mentioned and described in the petition in the Fayette circuit court of Commonwealth *vs.* Corbin, and have, as agent aforesaid, sold it to Dennis Mulligan for the sum of $400, one-half cash, balance payable on April 1, 1861, taking good security for the payment of money.

"T. B. MONROE, JR."

"*April* 4, 1861."

"I approve the above contract.

"GRANT GREEN, *Auditor.*"

"Wherefore, witnesseth, that for and in consideration of the premises, and the sum of one hundred and thirty-five dollars, the State's portion of said sale money under said contract, being paid into the treasury by the said Dennis Mulligan, and by virtue of the law in such cases made and provided, I, Grant Green, auditor of public accounts, have bargained, sold, and conveyed, and by these presents doth sell and convey unto Thomas B. Monroe, Jr., one equal moiety, and to Dennis Mulligan the other equal moiety of said lot, to have and to hold unto them, the said Monroe and Mulligan, and their heirs and assigns, all the right, title, and interest of said Commonwealth in and to said lot, with the appurtenances thereto belonging or in any wise appertaining, free

from all the claims of all persons claiming through or under said Commonwealth.

"Given under my hand, as auditor of public accounts, this 17th day of April, 1861.

"GRANT GREEN, *Auditor.*"

On page 10 of the Record will be found the deed of Thomas B. Monroe, Jr., and wife to Dennis Mulligan, for his undivided moiety of the house and lot; and the testimonials of the acknowledgments of these two deeds are found on pages 70 and 71 of the printed copy of the Record.

I maintain that these exhibits show not only Mulligan's equitable right to one moiety of the house and lot, but also his legal right to both moieties.

The Kentucky statutes in relation to *escheats* passed previously to the act of March 9, 1854, had these provisions:

"Lands or other property, to which the State may be entitled under the three first articles of this chapter, by the owner dying intestate, may be sold on a reasonable credit, at any time, by the agent of the Commonwealth, in pursuance to the written directions of the auditor."

"The auditor, after the purchase money for any land so sold is paid into the treasury, shall convey the title of the Commonwealth to the purchaser or his assignee, his heirs or devisors."

"The auditor may at any time remove an agent and appoint another, or fill any vacancy in that office." (See Stanton's Digest of L. Ky., vol. 1, page 460.)

The sale of escheated lands is to be made substantially by the auditor, as they are to be sold in pursuance to his written directions and by any person he may choose; and he may unmake an agent and appoint another, and direct him in making the sale as to the terms. Monroe made sale of the property in contest to Mulligan, and afterwards reported the sale and its terms to the auditor in writing, who approved them, and after the payment of the purchase money made such a conveyance to Monroe and Mulligan as enabled Monroe to perform the contract on his part substantially by

the conveyance of the other moiety of the property to Mulligan. If the auditor, in the first place, had appointed Monroe *agent,* and had given him written instructions for the sale of the property, and Monroe had made his report of sale, and upon the payment of the purchase money the auditor had executed a deed of conveyance for the property to the purchaser, all this would have been a formal compliance with the law, but would have produced no different result to the Commonwealth, to Monroe, or Mulligan, or any other person, than ensued from the mode adopted. The law was, therefore, substantially complied with, and the court ought not to disturb the sale as it was made because of the mere want of form.

But it is objected by the appellees that the auditor's deed to Monroe and Mulligan shows that only $135 was paid to the State when her moiety was of the value of $200. Concede this position to be true, Mulligan was not responsible for this injustice to the State; he had purchased the property for $400, all of which he had paid, and the sale to him should not have been set aside, the property adjudged to the Corbins, and he made to lose that amount of money for the default of others. Justice and equity would have been done to the Commonwealth and Mulligan by the State courts requiring him to pay into the treasury of Kentucky $75, with interest upon it—the amount whereof that treasury was minus on the sale of this property.

There is yet another view of this case that clearly entitles Mulligan to a judgment for the whole of the property in contest. If John Corbin and his wife and family took possession of the house and lot under the deed from the sheriff, he was a *quasi* tenant of his wife, she having a colorable title to an estate for her life. Corbin and wife were both sued by the Commonwealth of Kentucky for the property, and judgment was rendered in her favor for its recovery against them both; and what was the legal ~~conveyance~~ of this judgment?

A judgment of eviction against a tenant destroys the re-

lation between him and his landlord, and the tenant may then, without awaiting for the *habere facias* to be executed, purchase any other title for his own benefit. (Gore *vs.* Stevens, 1 Dana, 203.)

After judgment of eviction, the plaintiff, or his vendee, before or after the delivery of possession, may make a lease of the premises, which the tenant may accept, and thus change his tenure to amicable, and be precluded from disputing the title of his lessor. (Ball *vs.* Lively, 1 Dana, 65.)

If a judgment of eviction against the tenant alone would give him the right to take a lease from and become the tenant of the party who had obtained the judgment, this right of the tenant would be stronger and clearer where the judgment was against both tenant and landlord. The judgment in favor of the Commonwealth of Kentucky for the recovery of the house and lot being against both John Corbin and his wife, and she having a colorable claim of an estate for her life in the house and lot, John Corbin had the right to take the lease and become the tenant of the vendee, Mulligan, for the house and lot. Mulligan charges in two of his pleadings that John Corbin did take a written lease for this property from him, and he reluctantly and with studied vagueness admits its execution by him. (See printed copy of the Record, pp. 54, 56, 15, 33.) The execution of this lease is proved by J. H. Harrison's deposition. (Printed copy Record, 78.)

The date of Mulligan's lease to John Corbin is not proved. Monroe signed a memorandum in writing to Mulligan of the sale of the house and lot to him for $400, bearing date November 25, 1858; and the deed from Monroe and wife to Mulligan bears date April 25, 1861. In that memorandum Monroe stipulated to deliver possession of the property to Mulligan within a reasonable time. Monroe executed a receipt to Mulligan, bearing date December 4, 1860, for $100, and in it recited that Mulligan had theretofore paid him $200 on the house and lot, leaving $100 to to complete the pay-

ment of the whole of the purchase money of $400; and he stipulated that on the payment of the $100 he would, in April, 1861, or before, execute to Mulligan a *deed* for said house and lot; and nothing whatever was said in this writing about their possession being yet to be given to Mulligan. The reasonable presumption is that Corbin had before that time taken the written lease for the house and lot from Mulligan, and that the latter, by Corbin, held possession of them; otherwise something would have been said in that writing about the matter of Corbin's getting possession of them. The judgment of the Fayette circuit court, in favor of The Commonwealth of Kentucky *vs.* John and Martha Ann Corbin, for the recovery of the house and lot, as an escheat, was affirmed by the court of appeals, December 9, 1859, and the fair presumption is that soon after, and before the 25th of April, 1861, when Monroe and wife executed their deed to Mulligan, Corbin had taken the written lease from Mulligan for the house and lot. Mulligan, at the date of that deed, being in possession, by his tenant, of the property conveyed by it, the law against champerty does not affect the deed.

No statute of limitation runs against the Commonwealth, nor against her grantee, but from the date of his grant; so that any possession of the property by Barry or any person under him, or by the Corbins, would operate against Mulligan only after the execution of the deed from the auditor to Monroe and him, and the deed from Monroe and wife to him; and such possession was too short to prejudice his rights.

I state these propositions to be true and relevant to the merits of this case. The deed from the sheriff to the Corbins is void and of no effect, because, 1st, there is no legal and sufficient evidence in the record of the execution under which the property conveyed by it was sold; 2d, the deed was not made to the purchaser at the sheriff's sale, but to others; 3d, if the purchaser have the right to direct, and the sheriff the authority to make the deed to the Corbins, in conformity to his directions, there is no legal and sufficient evidence in the

record that March, the purchaser, ever gave such directions; 4th, the heirs of Wm. T. Barry had no title or estate in the house and lot which the law authorized the sheriff to levy upon, sell, and convey.

My next proposition is, that the act of the Kentucky legislature of 4th April, 1861, neither conferred any right nor title to the house and lot in contest upon the Corbins, nor impaired the right of the appellant, Mulligan, to them; because said act only proposed to release to the Corbins *whatever* interest the Commonwealth had in the property; and in law and equity she had no interest in it, because that interest had been conveyed to the said Mulligan by a substantial compliance with the law regulating escheats.

The third proposition is, that if the title to the property by the effect of the contract between the auditor of the State and Thos. B. Monroe, Jr., the recovery of that property, in the name and for the State, of the Corbins, the deed of conveyance from the auditor to Monroe and Mulligan, and the deed from Monroe and wife to Mulligan, was not vested in him, upon the recovery of the house and lot by the Commonwealth of John Corbin and wife, Monroe then became entitled to one moiety thereof as his compensation, and to that extent was entitled to a judgment against the Corbins, conceding to the act of the legislature all effect it could have from the language embodied in it.

4th proposition: That if the legal title of the Commonwealth of Kentucky to the property in contest was not passed to Mulligan, his purchase of it by a contract with Monroe, which was approved by the auditor, Governor, and attorney general, and his payment of the greater part, if not all, of the purchase money, gave him an equitable right to the property, to be consummated by a recovery of it, and his investment with the legal title, on condition of his paying to the Commonwealth of Kentucky a sum which, with what she had already received from him, would be of the value of one moiety of the property.

5th proposition: That the written lease which Corbin, the husband, took from Mulligan for the house and lot, after the judgment of recovery of them against Corbin, the husband, and Corbin, the wife, made them his tenants, and converted their hostile possession into an amicable one, and in law precluded them from disputing his title; but they having disputed it in court, Mulligan was entitled to a judgment against them for the house and lot.

Such was the judgment of the Fayette circuit court, (see printed Record, 36;) but that judgment having been reversed by the judgment of the court of appeals, this latter judgment should be reversed by this court, and the former judgment be reinstated in full force and effect.

GARRETT DAVIS,
for Appellant.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1867.

DENNIS MULLIGAN, *Plaintiff in Error,*
vs.
JOHN CORBIN AND OTHERS, *Defendants in Error.*

BRIEF FOR PLAINTIFF.

The petition in equity should have been on page 2 of the record, but by mistake it is on page 96; the amended petition is on page 2 of the record.

Law authorizing Auditor to employ Attorney.

The law of Kentucky authorizes the Auditor of Public Accounts to contract with an attorney for the recovery of escheats, provided the contract is signed by the Auditor of Public Accounts, countersigned by the Attorney General, and approved by the Governor of the Commonwealth, and provided the attorney's compensation is to come out of the escheat. (*Chapter* 34, *page* 464, *vol.* 1, *Stanton's Revised Statutes, published* 1860.)

Champerty.

This above cited law relieves transactions made in pursuance thereof from the charge of champerty, it being a repeal of the law of champerty as far as comes within its operation.

County Escheator.

It also gives the Auditor of Public Accounts plenary powers with regard to escheats recovered under it, and takes, by necessity, such cases of escheats out of the requirements of the gen-

eral law of escheats, as far as the action of the County Escheator is concerned, and entirely supersedes and does away with the necessity of the entire action of that officer in relation to this class of escheats.

The Auditor contracted with Monroe.

In pursuance of, and by authority of the above quoted law, the Auditor of Public Accounts, Thomas S. Page, contracted with Thomas B. Monroe, jr., for the recovery of an escheat, of which escheat Thomas B. Monroe, jr., was to have one equal moiety as compensation for his services for the recovery of the same, which said escheat consisted of a house and lot lying and being in the city of Lexington and State of Kentucky, particularly described in the pleadings in this suit, and in the pleadings in the suit of the Commonwealth of Kentucky against John Corbin, Martha A. Corbin, &c.; which contract was, as required by law, duly signed by Thomas S Page, Auditor of Public Accounts, James Harlan, Attorney General, Thos. B. Monroe, jr., attorney-at-law, and approved by C. S. Morehead, Governor of the Commonwealth of Kentucky, an official and certified copy of which contract is filed as an exhibit in the papers in this suit, and bears date November 1st, 1855, which is hereby referred to on *page* 26 *of the record.*

Monroe recovered the escheat.

In pursuance of which contract with the proper authorities Thomas B. Monroe, jr., as attorney and agent of the Commonwealth of Kentucky, recovered the property so escheated, which recovery is evidenced by the record of the suit of the Commonwealth of Kentucky against the said Corbins, a certified copy of which record, together with the mandate of the Court of Appeals of Kentucky, is filed in the papers of this suit as an exhibit, and is hereby referred to, commencing at *page* 27 *of the record.*

Monroe entitled himself to moiety of escheat.

By which recovery of said property by the said Thomas B. Monroe, jr., as an escheat to the State of Kentucky, together with

the rights of said Thomas B. Monroe, jr., under his said contract with the said State of Kentucky, made by him through Thomas S. Page, its Auditor of Public Accounts, the said Thomas B. Monroe, jr., fully entitled himself to one equal moiety of said escheated property, or house and lot.

Monroe sold escheat to Mulligan.

Thomas B. Monroe, jr., as attorney and agent of the Commonwealth of Kentucky, contracted with Dennis Mulligan, and sold to him the Commonwealth's interest as well as his own (Thos. B. Monroe, jr.'s) interest in and to said escheated property, or house and lot, by written contract bearing date November 25th, 1858, a certified copy of which contract of sale is filed in the papers as an exhibit in this suit, and is hereby referred to on *page* 11 *of the record.*

Mulligan paid for Monroe's moiety.

Dennis Mulligan paid two hundred dollars ($200) to said Thomas B. Monroe, jr., for his interest or moiety of said house and lot or escheat, which is acknowledged in writing, and receipted for by said Thomas B. Monroe, jr., a certified copy of which is filed in the papers in this suit as an exhibit, and is hereby referred to on *page* 12 *of the record.*

Monroe reported sale to Auditor.

Thomas B. Monroe, jr., made an official report to Grant Green, Auditor of Public Accounts of the State of Kentucky, of the sale by him of said escheat, or house and lot, as attorney and agent of the Commonwealth of Kentucky, to Dennis Mulligan, which official report bears date of April 1st, 1861, a certified copy of which report is filed as an exhibit among the papers of this suit, and is hereby referred to on *page* 25 *of the record.*

Auditor approved report of sale.

Grant Green, Auditor of Public Accounts of the Commonwealth of Kentucky, approved Thomas B. Monroe, jr.'s, report of sale of said escheat, or house and lot, as agent and attorney

of the Commonwealth of Kentucky, to Dennis Mulligan, and thereby rendered the proceeding *valid*, if there had been any irregularity, which approval is in writing, bearing date the 4th day of April, 1861, a certified official copy of which approval is filed in the papers of this suit as an exhibit, and is hereby referred to on *page* 25 *of the record.*

Mulligan paid the State's part of price.

Dennis Mulligan paid the State's part of the price of said escheat, or house and lot, into the treasury of the State of Kentucky, in proof of which a certified copy of the receipt of the Treasurer of the Commonwealth of Kentucky is filed in the papers in this suit, and is hereby referred to on *page* 25 *of the record.*

Auditor approved report of sale before the Governor approved the Corbin act.

Grant Green, Auditor of Public Accounts of the Commonwealth of Kentucky, approved the sale of said house and lot, or escheat, to Dennis Mulligan, by said Thomas B. Monroe, jr., as agent and attorney of the Commonwealth of Kentucky, before the Governor of the Commonwealth of Kentucky approved the act of the Legislature of Kentucky attempting to donate the said house and lot, or escheat, to the Corbins, the proof of which fact is seen in the depositions of John McCoy and Richard A. Buckner, Esq., in the papers of this suit, which are hereby referred to on *pages* 62 *and* 68 *of the record.*

Auditor conveys by deed to Monroe and Mulligan.

Grant Green, Auditor of Public Accounts of the Commonwealth of Kentucky, by deed, conveyed one equal moiety of said escheat, or house and lot, to said Thomas B. Monroe, jr., and one equal moiety of said escheat, or house and lot, to said Dennis Mulligan; said deed to said Thomas B. Monroe, jr., bears date of the 17th day of April, 1861, and said deed to said Dennis Mulligan bears date of April 17th, 1861, certified copies of both of which said deeds are filed in the papers in this suit

as exhibits, and are hereby referred on *pages* 9, 10, *and* 11 *of the record.*

Monroe and wife convey by deed to Mulligan.

The said Thomas B. Monroe, jr., and wife, by deed, conveyed to Dennis Mulligan the said Thomas B. Monroe, jr.'s, moiety of said escheat, or house and lot; said deed of said Thos. B. Monroe, jr., and wife, to said Dennis Mulligan, bears date of the 25th day of April, 1861, a certified copy of which deed is filed as an exhibit in the papers in this suit, and is here referred to on *pages* 12, 13, *and* 14 *of the record.*

Corbin leased from Mulligan.

The said John Corbin leased the said escheat, or house and lot, from Dennis Mulligan, and thereby admitted his ownership, and acknowledged his right to the property, and became his tenant, and held under him, and was his tenant at the time the Legislature of Kentucky attempted to donate the said escheat, or house and lot, to the said Corbins, in proof of which see the depositions of Joseph Harrison and John McCoy, filed in the papers of this suit as exhibits, and are here referred to on *pages* 66 *and* 67; *deposition of John McCoy, page* 62 *of the record.*

The deeds all completed before the Corbin act would have gone into effect.

The deeds from Grant Green, Auditor of the Commonwealth of Kentucky, to Thomas B. Monroe, jr., and Dennis Mulligan, and the deed from Thomas B. Monroe, jr., and wife, to Dennis Mulligan, were all made and completed before the Corbin act of the Kentucky Legislature would have gone into effect had it been constitutional.

Time of approval of Corbin act by Governor.

The act of the Legislature, attempting to donate the said escheat, or house and lot, to the Corbins, passed the Kentucky Legislature on the —— day of ————, and was approved by the Governor on the 4th day of April, 1861, and as no time was fixed by the act when it should go into effect, consequently

it would have gone into effect in sixty days, or two months, after its approval by the Governor, under the general law in relation to statutes (*Stanton's Revised Statutes, page* 667, *volume* 2*d*); and a certified official copy of the act of the Kentucky Legislature, attempting to convey said escheat, or house and lot, to the Corbins, is in the papers in this suit as an exhibit, on *pages* 23 *and* 24 *of the record;* also in the statutes of Kentucky for the year 1861, *page* 231, entitled "An act for the benefit or Martha A. Corbin," whereby it will be seen that said act, even if it had been valid, could have conferred no right on the Corbins until it went into effect, in sixty days after its approval by the Governor of Kentucky; consequently all the deeds above referred to having been completed before it could, by any possibility, have gone into effect, must be and are valid, even if the Corbin act had been constitutional; consequently the deeds supersede the Corbin act.

Corbin act unconstitutional and void.

The act of the Kentucky Legislature, attempting to donate the said escheat, or house and lot, to the said Martha A. Corbin and Martha Corbin, jr., is void and of no effect, because it is unconstitutional, it being a law *impairing a contract.* The constitution of Kentucky says: "That no *ex post facto* law, nor any law impairing contracts, shall be made." (See *Constitution of Kentucky, article* 13, *section* 20.) The constitution of the United States says: "No State shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law or law impairing the obligation of contracts, or grant any title of nobility." (*Constitution of the United States, section* 10, *article* 1.) And again the constitution of Kentucky says: "No person, for the same offense, shall be twice put in jeopardy of life or limb, *nor shall any man's property be taken and appropriated to public use without just compensation being previously made to him.*" (*Constitution of Kentucky, article* 13, *section* 14, *Bill of Rights.*) The Corbin act goes to deprive

Thomas B. Monroe, jr., of the benefit of his contract, and impairs it, and fixes no compensation for Monroe and Mulligan, although it attempted to apply their property to public and private use, and impairs the contract of said Thomas B. Monroe, jr., with the State of Kentucky, in relation to said escheat, or house and lot; plaintiff therefore claims the interposition and benefit of the constitution of Kentucky and of the constitution of the United States in his behalf, and asks that the Corbin act, or act of the Legislature of Kentucky, entitled "an act for the benefit of Martha A. Corbin," be set aside as a law impairing a contract, and not compensating for private property, and declared void for unconstitutionality. (See *Constitution of Kentucky and Constitution of United States; also an official certified copy of Corbin act in the papers of this suit.*)

Martha Corbin, jr., has no title.

Martha Corbin, jr. is not entitled to title or possession by limitation or twenty years' possession in and to said escheat, or house and lot, in this suit mentioned, because the said Martha A. Corbin being still alive, said Martha Corbin, jr., can set up no claim of present title, neither can she claim any title by limitation or prescription, because she is an infant under twenty-one years of age, living and inhabiting in the family of said John Corbin and Martha A. Corbin, her father and mother; and any lapse of time which might, per possibility, be set up, could not inure to her benefit, she not having any legal separate existence, or separate title of ownership, while she resides or resided in the family of her said father and mother.

The said Martha Corbin, jr., was not a necessary party to the suit of the Commonwealth of Kentucky against the said John Corbin and Martha A. Corbin, in relation to the said escheat, or house and lot, in said suit mentioned, and now in controversy in this suit, because the result of that suit, and the pleadings in that suit, show clearly that Martha A. Corbin had no life estate in it, and consequently there could be no remainder; and that none of the said Corbins had any right, title, or interest in said

property; consequently she, Martha Corbin, jr., could have then had no valid claim of remainder in it, neither could she, Martha Corbin, jr., have had any valid claim by limitation at that time or now, because of the reason of the fact above mentioned, of her infancy and living with her said father and mother, and her want of present interest.

If Martha Corbin, jr., or any one of the Corbins, had title, why apply to the Legislature of the Commonwealth of Kentucky for a grant of the said escheat, or house and lot? The best proof on earth that said John Corbin and Martha A. Corbin, or said Martha Corbin, jr., had no title or interest or right to said house and lot, or escheat, and that said Martha Corbin, jr., had no title of remainder, or any other title, is the single and plain fact that they all attempted to obtain a grant or gift of the said property from the Legislature of the Commonwealth of Kentucky for it. If it was theirs, then why beg it from any person or institution whatever?

Mrs. Hickey's dower.

The fact that the late Auditor of Public Accounts, Thomas S. Page, and the other State officers, allowed dower to Mrs. Hickey in said escheat, or house and lot, shows that they were under a false impression that she was, or must have been, entitled to it; but he and they were mistaken; then whether or not it is a question not entering into this suit, but is a question between Thos. S. Page, Mrs. Hickey, and the Commonwealth of Kentucky; for if Mrs. Hickey is not entitled to it, then the Commonwealth is entitled to that amount of money, and plaintiff, Mulligan, is good for it, and willing to pay it, and it does not concern the defendants, the Corbins, and does not, and cannot, in any way, invalidate the contract between the Commonwealth of Kentucky and Thomas B. Monroe, jr.

Claim of twenty years by defendants.

The defendants, John Corbin, Martha A. Corbin, and Martha Corbin, jr., cannot claim the said escheat, or house and lot, by twenty years' possession, because the said defendants, John Cor-

bin and Martha A. Corbin, in the said suit of the Commonwealth of Kentucky against them for the said escheat, or house and lot, attempted the same twenty years' claim, and were beaten, which, from and after the date of that suit, bars them, and cuts them off from attempting that plea as a defense or title; and Martha Corbin, jr., who is an infant, residing with them, cannot legally set up that plea or defense, because, whilst they, the said John Corbin and Martha A. Corbin, live, the joint possession of them, if it could inure to the benefit of any one, would inure to the benefit of the said John Corbin and Martha A. Corbin, the heads of the family, and she residing with them as a child, and she only claiming in remainder. The right of the Commonwealth of Kentucky accrued before the passage of the Revised Statutes making time run against the State, and is saved from the effect of that statute. (See *Stanton's Revised Statutes of Kentucky, volume* 2, *page* 123, *chapter* 63, *art.* 1.)

Court of Appeals decided for Commonwealth of Kentucky.

But the finality of the matter, as far as the defendants, the Corbins, are concerned, is, that the Court of Appeals of Kentucky, the last resort in all such cases, by their solemn decision, decided that the said escheat, or house and lot, was at that time the property of the Commonwealth of Kentucky, and not of the defendants, the Corbins, which effectually, as before stated, cuts off all claim which they might or could attempt to make by twenty years' possession or limitation; and the *lease under which they held* under the plaintiff, and this suit by the plaintiff, cuts off any attempt to apply or splice the intervening time between the time of the decision of the Court of Appeals of the suit of the Commonwealth of Kentucky against the said Corbins, the defendants, and the time of bringing this suit. (See *mandate of the Court of Appeals of Kentucky, filed in the papers in this suit as an exhibit, on page* 45 *of the record.*)

The equity.

The equity of plaintiff, Mulligan, is superior to that of the defendants, the Corbins, or of any other person, because he

purchased the said escheat, or house and lot, from the Commonwealth of Kentucky, and paid for it in money, whereas the defendants, the Corbins, attempted firstly to swindle the State out of it by a claim of limitation, and, failing in that, they then sought to obtain it as a gratuity; and the equity of a purchase for a money consideration is superior to that of them who seek to obtain by beggary.

Defendants' claim of estoppel.

The allegation of the defendants, the Corbins, that the Commonwealth of Kentucky was estopped from asserting any claim or right of escheat to the said escheat, or house and lot, because of an alleged sale of said house and lot at the suit of the Bank of Kentucky against W. T. Barry's heirs and executors, is not well taken, and amounts to nothing, because the Bank of Kentucky is not the State or Commonwealth of Kentucky, but only a banking institution chartered by the Commonwealth of Kentucky, and the State of Kentucky a stockholder like any other stockholder—see *Littell's Laws of Kentucky, volume* 3, *page* 370—and doing business like any other bank; and said Barry had no right to said property, and said Bank could obtain no right by said sale; nor could the said defendants obtain any right by their alleged purchase under said attempted sale of said escheat, or house and lot, at the suit of said Bank against said Barry, because said Barry had no right or title in fee to said property, all of which has been decided by the Fayette Circuit Court and by the Court of Appeals of Kentucky, in the suit of the Commonwealth of Kentucky against said Corbins, which is witnessed by the record of that suit, filed in the papers in this suit, and is hereby referred to from *pages* 27 *to* 45.

Whilst a suit is pending the statute of limitation does not run.

The suit of the Commonwealth of Kentucky against John Corbin and Martha A. Corbin, for the said escheat, or house and lot, during the time it was pending, prevented the statute of limitations from running in favor of said Corbins, the defendants;

that suit was brought and filed in the Fayette Circuit Court on the 21st of July, 1856, as can be seen by the record of the case on *page* 27 *of the record*, now filed in the papers in this suit, and was terminated on the 9th of December, 1859. (See *mandate on page* 45 *of the record.*) Consequently, during the interval between the commencement of that suit, and the termination of it, a period of ——— years, the statute of limitation could not run in their favor, which effectually precludes the defendants from the use of that plea, which they attempt to plead in this suit—that is, that they occupied it as their own for and during the twenty years then last passed.

The effect of the lease of Mulligan to Corbin.

Then after the termination of the suit of the Commonwealth against John Corbin and Martha A. Corbin, John Corbin, defendant, took a lease under Mulligan, the plaintiff, and held under him as his tenant, and his wife, the said Martha A. Corbin, lived with her said husband in the said escheat, or house and lot, under the said lease, and acquiesced in it from the commencement of said lease until its termination, a period of —— years. (See *deposition of Jos. Harrison, on page* 67 *of the record, and deposition of John McCoy, Esq., on page* 62 *of the record.*) Said lease bears date of ————————, which amounts to a period of —— years of time, which precluded the statute of limitation from commencing to run in favor of the defendants in the fresh during the existence of that lease.

Commencement of this suit by Mulligan.

Then the plaintiff, Mulligan, on the 15th day of July, 1861, filed this suit in the Fayette Circuit Court, which is still pending and undecided, all of which, that is to say, the suit by the Commonwealth of Kentucky against the defendants, John Corbin and Martha A. Corbin, and the lease by plaintiff, Mulligan, to the defendant, John Corbin, and the acquiescence therein by the defendant, Martha A. Corbin, and the commencement by plaintiff, Mulligan, of this suit against the defendants, John Corbin, Martha A.

Corbin, and Martha Corbin, jr., all covering a period of time running from its commencement, on the 21st day of July, 1856, until the termination of this suit, whenever that may be; thus the plea of the defendants, of twenty years' possession then last passed, claiming and occupying it as their own, is effectually cut off from and after the date first above referred to of the commencement of the suit of the said Commonwealth of Kentucky against the said defendants on the 21st of July, 1856, the record of suit of Commonwealth of Kentucky against John Corbin and Martha A. Corbin, and deposition of Joseph Harrison in relation to said lease, and the date of the commencement of the suit on file and referred to.

No time runs against the Commonwealth.

It is a well-settled maxim of law that no time runs against the Commonwealth, therefore no lapse of time could avail the defendants against the Commonwealth of Kentucky, claiming said property as an escheat; and not only claiming said property as an escheat, but actually recovered it from defendants as an escheat. Plaintiff, Mulligan, deduces his title from the Commonwealth, therefore he stands in the place of the Commonwealth of Kentucky, and has a right to plead and allege the same exemption from the operation of the statute of limitations as the Commonwealth; therefore no lapse of time alleged by defendants against him in this case, not even a thousand years, claiming it as their own, could avail them anything.

The statute of limitation does not run against the Commonwealth. (*Chiles vs. Calk, 4th Bibb's Kentucky Reports*, 554.) The points on which the case of *Chiles vs. Calk* turned and were adjudicated are precisely the same as in this case of *Mulligan vs. Corbin.* Please read the report above cited. The Commonwealth of Kentucky acquired her right to said escheat before the passage of the Revised Statutes making time run against the Commonwealth, and her rights in such case is saved by the statute. (See *Stanton's Revised Statutes of Kentucky, volume* 2, *page* 123, *chapter* 63.)

Supposed irregularity of Auditor not available against plaintiff.

The defendants having no color of title cannot avail themselves of any supposed irregularity in the acts of the Auditor, if any there had been, so as to make them available against plaintiff, Mulligan; for the act attempting to donate the said property or escheat to defendants being void for unconstitutionality, as before shown, the defendants are also cut off from the plea of statutes of limitation and occupancy by the legal fact that no time runs against the Commonwealth, they also, therefore, claiming without any color of title; and they cannot avail themselves of any supposed error or irregularity in the acts of the Auditor, or of any person else acting for the Commonwealth of Kentucky, such acts being entirely foreign to them, and being only questions between the Commonwealth, its officers, and plaintiff, Mulligan; and it cannot be denied but that Monroe had a right to sell his own moiety without the interposition of either agent or escheator.

Difference between agent and escheator.

The law provides that the agent shall, in all cases, be appointed by the Auditor of Public Accounts. (*Stanton's Revised Statutes, volume* 1, *page* 459.) The law also provides that the Auditor may, at any time, remove an agent and appoint another, or fill any vacancy in that office. (*Stanton's Revised Statutes, volume* 1, *page* 460.) The law makes it the duty of such agent to sell any estate or property that may come to his possession, on such terms as the Auditor may direct, taking good security for the sale money, which sale he shall report in due time to the Auditor. (*Stanton's Revised Statutes, volume* 1, *pages* 459–60.) Thus it will be seen that the proceedings of T. B. Monroe, jr., the agent, were correct and proper, and the final approval, by the Auditor, of the sale made by him of said escheat to Dennis Mulligan, operates to cure any irregularity, if any irregularity there might have been, or if any there had been, in either his appointment or proceedings. It is well to observe

that the agent is not the escheator, and he ought not to be confounded with that officer.

The law makes it the duty of the Governor of the Commonwealth to appoint the escheator. (*Stanton's Revised Statutes, volume* 1, *page* 161.) The law makes it his duty to hold inquests of escheat, &c. (*Stanton's Revised Statutes, volume* —, *page* ——.)

It is thus seen that the agent and escheator are different officers, differently appointed, and that the agent, and his proceedings and sales of escheated property by such agent, are entirely within the control and direction of the Auditor of Public Accounts.

The depositions of Merrell, Hill, and others, in behalf of plaintiff, prove that one *Stevens* held possession of the premises adversely to the Corbins, claiming as owner in his own behalf, within twenty years. (See *depositions on pages* 68, 69, 70, 71, *and* 72 *of the record.*)

The benefit of the Constitution of the United States of America is specially invoked in the petition for a rehearing now in the record on *page* 19 *of the petition for rehearing*, and is here referred to.

All of which is respectfully submitted to the honorable Court.

JOHN McCOY,
JOHN B. HUSTON.

Authorities relied on where State laws are unconstitutional and void by reason of *impairing a contract:*

United States Digest, page 127, *volume* 11 (*No.* 61); *Stanmire vs. Taylor*, 3 *Jones' Law* (*North Carolina*), *page* 207; *United States Digest, page* 125, *volume* 7 (*Nos.* 18, 19, 20, *and* 21); *Winter vs. Jones*, 10 *Geo.*, 190; *United States Equity Digest, page* 168, *volume* 1 (*No.* 7); *Canal Company vs. Railroad Company*, 4 *Gill & J.*, 1; *United States Digest, page* 127, *volume* 11 (*No.* 71); *Damman vs. Commissioners of School Lands*, 4 *Wis.*, 414; *United States Digest, page* 133, *volume* 10 (*No.* 89); *Thompson*

vs. Holton, 6 *McLean*, 386; *United States Digest*, *page* 134, *volume* 10 (*No.* 105); *see Absent & Co., debtors*, 52, *infra*, 131, *ferry*, 1; *United States Digest*, *page* 108, *volume* 9 (*No.* 2); *State Bank of Ohio vs. Knoop*, 16 *How. U. S.*, 369; *United States Digest*, *page* 109, *volume* 9 (*Nos.* 13, 14, *and* 15); *Slack, &c., vs. Maysville and Lexington Railroad Company*, 13 *B. Monroe*, 1; *United States Digest*, *page* 106, *volume* 8 (*No.* 1); *Curran vs. Arkansas*, 15 *How. U. S.*, 304; *United States Digest*, *page* 106, *volume* 8 (*No.* 17); *Jemison vs. Planters and Merchants' Bank*, 23 *Ala.*, 168; *United States Digest*, *page* 106, *volume* 8 (*No.* 20); *O'Donnell vs. Bailey*, 24 *Miss.*, 386.

Authorities relied on where State laws are unconstitutional and void, for taking private property *without compensation:*

United States Digest, *page* 110, *volume* 9 (*No.* 32); *Hay vs. Swan*, 5 *Md.*, 237; *United States Digest*, *page* 107, *volume* 8 (*No.* 40); *Hall vs. Boyd*, 14 *Geo.*, 1; *United States Digest*, *page* 128, *volume* 11 (*No.* 91); *Jones vs. Armstrong*, 19 *Geo.*, 427; *United States Digest*, *page* 135, *volume* 10 (*No.* 116); *Boston and Lowell Railroad vs. Salem and Lowell Railroad*, 2 *Gray* (*Mass.*), 1; *United States Digest*, *page* 109, *volume* 9 (*Nos.* 24, 25, 26, *and* 27); *Morgan vs. King*, 18 *Barb.* (*N. Y.*), 277; *United States Digest*, *page* 109, *volume* 9; *Wallace vs. Karlenouski*, 19 *Barb.* (*N. Y.*), 118; *United States Digest*, *page* 109, *volume* 9 (*No.* 29); *Harwell vs. Armstrong*, 19 *Barb.* (*N. Y.*), 166; *United States Digest*, *page* 110, *volume* 9; *Gould vs. Glass*, 19 *Barb.* (*N. Y.*), 179.

Authorities relied on where State laws are unconstitutional and void because *retrospective:*

United States Digest, *page* 120, *volume* 6 (*No.* 2); *Benson vs. the Mayor, &c., of New York*, 10 *Barb., sup., ch.* 223; *see Terry*, 1–5; *United States Digest*, *page* 121, *volume* 6 (*No.* 13); *Wright vs. Marsh*, 2 *Greene* (*Iowa*), 94; *see infra* 104, 123, 124, 125; *United States Digest*, *page* 125, *volume* 10 (*Nos.* 111 *and* 112); *DeCordova vs. Galveston, Texas*, 470; *United States Equity Digest*, *page* 170, *volume* 1 (*No.* 32); *Jennings vs. Jarvis*, 3 *Ewd., ch.* 462; *Head vs. Ward*, 1 *J. J. Marsh.*, 280; *United States Equity Digest*, *page* 171, *volume* 1 (*No.* 44); *Bank of the State vs. Cooper*, 2 *Yerger*, 599; *United States Digest*, *page* 109, *volume* 9 (*No.*

16); *Slack vs. Maysville and Lexington Railroad Company*, 13 *B. Monroe*, 1; *United States Digest*, *page* 107, *volume* 8 (*No.* 28); *Von Smidt vs. Huntington*, 1 *Cal.*, 55; *see Actions, Penal*, 10; *United States Digest*, *page* 124, *volume* 7 (*No.* 4); *Blunt vs. Sawyer*, 21 *Conn.*, 351.

James Davis

Supreme Court of the United States.

Dennis Mulligan, Plaintiff in Error,

vs.

John Corbin, Martha A. Corbin, and Martha Corbin, Jr.

No. 114.

IN ERROR TO THE KENTUCKY COURT OF APPEALS.

BRIEF FOR THE APPELLEES.

GEORGE ROBERTSON, J. B. BECK AND MOORE & BRIGHT,

COUNSEL FOR APPELLEES.

WASHINGTON, D. C.

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1869.

In the Supreme Court of the United States.

DENNIS MULLIGAN, Plaintiff in Error,
vs.
JOHN CORBIN, MARTHA A. CORBIN, And MARTHA CORBIN, Jr. } No. 114.

In Error to the Kentucky Court of Appeals.

Brief for the Appellees.

In its history and character this is an extraordinary case, which, though apparently trifling in value, is yet as interesting to the appellees as it would be to Astor of New York, if it involved his gigantic estate. It involves their humble home, long endeared to them, and this is their all.

A free negro named Solomon Brindly once owned a fractional lot, with a small house upon it, in Lexington, Kentucky. Some time before the year, 1829, William T. Barry, Postmaster General, and Minister to Spain, who died in 1835, took possession of it, claiming it as his own with the apparent consent of Brindly. That possession was continued by Barry's tenants during his life, and the tenants of his heirs after his death, until the year 1843, when, as the property of those heirs, it was sold under execution, on a judgment obtained against them by the old Bank of Kentucky, then substantially owned by the State.

The mother of Mrs. Corbin bought the property, and by her order the sheriff conveyed the title to Mrs. Corbin, for life, and remainder to her daughter Martha, who were then in a state of destitution, with infant children, and a husband and father terribly mutilated by the falling of a house upon him.

This was a gift, and its object was to secure a little home to the poor and homeless family. The property was occu-

pied by that family, or for its use, until the year 1855, under that conveyance, without question or disturbance.

But in that year a young lawyer, (Thomas B. Munroe,) finding that there was no conveyance from Brindly to Barry, or other written evidence of sale, and also that Brindly left no known heir at his death, made a contract with the Auditor of Kentucky, whereby it was agreed, that if the said Munroe would procure its escheat to the Commonwealth, he should have one-half of it, subject to Mrs. Barry's dower.

A suit was accordingly brought against Mrs. Corbin, and her crippled husband, for escheating the property, and being ignorant and poor, and Mrs. Barry being thus silenced, having no information on the subject of her husband's evidence of title, they were not able to make a full and proper defense, and consequently judgment was rendered against them, and was affirmed by the Appellate Court of Kentucky, on a technical ground; which, with the oral testimony and the possession of nearly forty years, were clearly on the side of the occupants.

Shortly afterwards the Kentucky Legislature, repudiating the Auditor's agency and authority, and disclaiming any just right to property for which the State had been paid by Barry's heirs, magnanimously and justly passed an act on the 4th of April, 1861, releasing all claim to the property, and passing all the State's title to Mrs. Corbin for life, with remainder to her daughter, Martha, according to the sheriff's deed to them.

But Munroe, whose duty it was, as then Secretary of State, to present, without delay, the act to the Governor, for his approval, failed to do so, until he had gone to the Auditor, and for the first time reported to him the recovery of possession of the property, and his sale of it to Mulligan for four hundred dollars; of which Munroe himself received two hundred; only one hundred and thirty-four dollars paid as the State's share; and the residue, as may be presumed, retained for Mrs. Barry's share.

On the 17th day of April, 1861, Mulligan paid the one hundred and thirty-four dollars to the Auditor, who thereupon conveyed the house and lot to Munroe and Mulligan, in equal moieties, and eight days afterwards Munroe conveyed his half to Mulligan.

During all this time Mrs. Corbin was in the actual possession of the property, claiming it as her own. The Governor approved the legislative act on the same day of

the Auditor's approval of Munroe's report, which might not have been made, had not the Legislature thus exposed and rebuked the transaction.

Soon afterwards Mulligan unavailingly attempted, by a warrant for forcible detainer against John Corbin alone, who had never been in possession except with his wife, under her separate title, to gain possession of the property, and by that unmaintainable proceeding Mulligan induced the husband to accept a lease for one year rent free, to which Mrs. Corbin never consented. The possession, therefore, still remained in her constructively. After all this, Mrs. Corbin refusing to surrender to Mulligan, he brought this action to recover the possession, for which he strangely obtained judgment, which the Appellate Court of Kentucky reversed, and the mandate directed the dismission of the action.

Not content with the persecution which these poor women had already endured, with no armor of resistance except their needles and the justice of their cause, Mulligan has presumed to drag them before this August tribunal of the nation; and here only volunteer counsel can represent them, and defend for the last time their sacred log cabin.

And here, *in limine*, the counsel move for a dismission of the appeal, for want of appellate jurisdiction by this court. It certainly can have no jurisdiction, unless the statute of April 4th, 1861, impaired the obligation of Munroe's contract. And for the following, among other reasons, that contract imposed no legal obligation on the State of Kentucky which its enactment could impair:

First. The property first having been sold and conveyed to the appellees, as Barry's estate, and for the benefit of the State, she could not deny the right thus acquired from herself, and evict the purchasers, under pretense of a paramount title afterwards acquired by escheat or otherwise from Brindly. She was bound, on the contrary, to the purchasers to defend and assure the title thus acquired by them, virtually from herself; and that she felt and recognized the force of this obligation as legal as it was moral, is proved by the subsequent act of the legislative organ of her will. The hostile contract between the Auditor and Munroe must be presumed to have been made without her authority, and against her will, and therefore not being binding on her, it was her right and her duty to disregard and repudiate it, as she did as soon as made acquainted with the facts; and consequently by that act of justice, thus

righting herself, she did not impair the obligation of any legal contract.

As the contract was against the implied authority, it was champertous and void, because the appellees were in the adverse possession of the property, and because also the attorney was to have one-half of the thing he engaged to sue for.

According to a statute of Kentucky, such a contract was illegal and void. The preliminary investigations which induced the contract, must be presumed to have made the parties, and especially Munroe, acquainted with all the leading facts, and being thus informed, his contract was a constructive fraud upon the appellees, and also on the State; and moreover the express recognition of Barry's title by the stipulation for dower to his widow, and the implied recognition therefore of the title of the appellees, made the contract fraudulent in fact. It was consequently void on the ground of fraud, and no legal obligation resulted from it.

Fourth. The Auditor's conveyance to Munroe and Mulligan, and Munroe's conveyance to Mulligan, both made after much shuffling, and with full notice of the legislative act, were not only made against the express will of the State, but with a fraudulent intent. They are both therefore void, and Mulligan never acquired any title, and the statute never divested him of any vested right. Moreover Munroe had no authority to sell to Mulligan; the State's agent alone had such authority; and Baxter, not Munroe, was the agent for Lexington. The second article of chapter thirty-four Revised Statutes, p. 459 of 1st Vol., required the agent to take an oath and execute a prescribed bond before he could act; and Munroe was never thus qualified; but the same statute authorizes the agent to sell such property of the State which had come to his possession; and the property sold to Mulligan had never come to Munroe's possession, but was all the time in the adverse possession of the appellees, claiming under Barry, and the State's sale of his title.

Then, the State not having authorized that sale, the Auditor's approval was illegal, and his conveyance to Munroe and Mulligan and that of Munroe to Mulligan were all void, not only as being unauthorized and against the known will of the State, but also as champertous. They were also constructively fraudulent as the auditor was deceived

by Monroe's false report that he had possession, and also because he, without authority took only one hundred and thirty-four dollars for the State, and permitted Munroe to keep two hundred dollars for himself, and sixty six dollars for Barry's widow, who was entitled to nothing if the property was escheatable as Brindly's, and which bonus of dower as before indicated implied, that when Munroe made the contract for escheating, he knew that property was Barry's when sold as his for the benefit of the State, and was therefore the property of the appellees when he instituted the proceeding. And this is presumptive evidence of fraud *ab initio*, tainting all his subsequent acts in this case.

Besides, as Mrs. Corbin owned only the life estate, and whose daughter who owns the remainder, was not a party to the judgment or escheat, it was void as to the remainder, and therefore the judgment in ejectment against her, and the conveyance by the auditor, and that also by Munroe pretending to convey the entire fee simple, were false and fraudulent in law.

That no contract binding on the State was impaired by her act passing the title to the appellees. There was no obligation to impair, and even if there had been any such obligation the State was under a prior and paramount obligation to assure the title to the appellees, and legislatively fulfilling that precedent and superior duty could not be considered an impairment of a posterior and subordinate obligation; though ostensibly conflicting with it; consequently this court has no jurisdiction, and ought for that reason to dismiss the appeal.

But whether the appeal be dismissed or not, Mulligan surely has no title. What is it, and how derived? Illegal and fraudulent, and derived from the auditor without and against authority. Having no legal right of entry he cannot maintain this action even if the appellees had no other right than possession, which having been continuously adverse for more than 30 years, invests them with the whole title, and would bar Mulligan if he ever had any cause of action against them. But he never had any valid title, and his color of title was subsequent to the legislative act. The appellees might therefore rest assured of repose hereafter, and their counsel trusts that the judgment of this Court will give a quietus forever to this pestilent and persecuting litigation. If Mulligan should claim restitution he must look to Munroe for what he paid him, and to the Auditor for the one hundred and thirty-four dollars which he paid

him. But however this may result, either a dismission of his appeal or an affirmance of the judgment of the Appellate Court of his own State will be to the appellees but small retribution, and to him less than the award of full justice and righteous law.

GEO. ROBERTSON,
Of counsel for the appellees.

We might with much propriety so far as the argument for the appellees is concerned, rest the case at this point upon the able and convincing brief of our distinguished colleague, Judge Robertson; but our solicitude for our clients and the extraordinary and anomalous character of the proceeding by which the appellant seeks to obtain from the appellees, their property, constrain us to add a short argument.

First, the State of Kentucky by virtue of the sale under the execution issued upon the judgment of the Old Bank of Kentucky, recognized the property as that of Barry's heirs, because, as the record shows, the bank was principally owned by the State, and whatever right, title, and interest Barry and his heirs had, passed by virtue of the sale and deed to Mrs. Corbin to her and her daughter Martha. The right, title, and possession of Barry and his heirs passed by said sale and conveyance to Mrs. Corbin, and such right, title, and possession are as available in the hands of the appellees, as they would have been in the hands of Barry and his heirs, in any action brought against them to recover the possession of the property. That long continued and unbroken adversary possession would be an effectual bar against any suit that might have been brought by any party except the State; and she having conveyed away all her right through the bank, it results, that the appellees are properly invested with all the legal and equitable rights which could possibly pertain to said property.

So strongly have these rights been felt and recognized, by both the Legislature and the Appellate Court of Kentucky, that they have each sanctified them by solemn legislation and adjudication. And it seems to us that it would require a wonderful stretch of the imagination to come to the conclusion that this Court would overturn the legislative will of the State of Kentucky, and the adjudication of her highest judicial tribunal, and that too against most palpable and manifest equity and right.

But it is said for the appellant that the act of the Legis-

lature of the State of Kentucky in favor of the appellees impaired the obligation of a contract in violation of the Constitution of the United States, and of the State of Kentucky. How was it impaired? The proceeding in the first place to escheat the property was by the State, and whatever was recovered in said proceeding belonged to the State.

It may, however, without affecting in the slightest degree the force of this argument, be admitted that the Auditor of the State had the authority to contract with the attorney, Mr. Munroe, to give him one-half of the proceeds of the escheated property as his fee. That contract with Mr. Munroe did not confer upon him the character of an agent for the State of Kentucky, nor invest him with any authority as such; and every act of his outside of his professional duty as an attorney in the case was absolutely void; or if valid at all could only be made so by legislative sanction; which was never obtained, but on the contrary was repudiated by the legislature of the State.

It is a well settled principle of law which needs only to be stated, that an agent acting outside of the scope of his authority cannot bind the Gouernment by any contract which he may make. This principle has been repeatedly settled by this Cout, and during the present term in the case familiarly known as the Floyd acceptances.

Much less could a party without the shadow of authority as an agent bind the Government by any act of his; but even if this were not true there is another ground in favor of the appellees which is impregnable, and must determine this controversy in their favor; it is this, that whilst Mr. Munroe and the Auditor were moving on to carry out what they assumed they had the authority to do the same authority to wit? the legislature of the State had the matter under consideration, and of which they had full notice as is clealy shown by the record.

And the consummation of that legislation which was intended to protect the appellees, was substantially accomplished before the conveyance to Munroe and Mulligan, and even before the Auditor's approval of Munroe's report.

And indeed would have been completed by the approval of the Governor had not Mr. Munroe, then Secretary of State and an interested party, detained the act in his hands and produced the delay. Surely this was no binding contract on the part of the State with the appellant Mulligan. First, it was so manifestly an effort on his part to defeat

the legislative will by obtaining a conveyance of the property to him when he knew that the legislature had repudiated the whole transaction. Secondly, because Mr. Munroe was not the agent of the State and had no authority to sell and convey to him. We insist that before this Court will determine any transaction to be a contract within the meaning of the Constitution of the United States, and of the State of Kentucky, which those instruments declare, cannot be impaired by any legislative enactment, it will have to be satisfied that such transaction is free from any taint of fraud or circumvention.

We invite the special attention of this court to the opinion of the Appellate Court of Kentucky in the case, and the authorities therein cited. We shall not comment on that opinion, nor protract this argument by quoting from those authorities. We confidently ask for an affirmance of the judgment.

J. B. BECK AND
MOORE & BRIGHT,
Solicitors and of Counsel for the Appellees.